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**THE DAIRY AND LIVESTOCK  
PRODUCER PRODUCTION ACT OF  
1996**

P12-94

**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON  
LIVESTOCK, DAIRY, AND POULTRY  
OF THE  
COMMITTEE ON AGRICULTURE  
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

**H. R. 3762**

JULY 11, 1996

**Serial No. 104-33**

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# THE DAIRY AND LIVESTOCK PRODUCER PROTECTION ACT OF 1996

THURSDAY, JULY 11, 1996

HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON DAIRY, LIVESTOCK AND POULTRY,  
COMMITTEE ON AGRICULTURE,  
*Washington, DC.*

The committee met, pursuant to call, at 9:35 a.m., in room 1300, Longworth Office Building, Hon. Steve Gunderson [chairman of the subcommittee] presiding.

Present: Representatives Goodlatte, Smith, Lucas, Volkmer, Peterson, Dooley, and Holden.

Also Present: Representative Johnson.

Staff Present: John Frank, Pete Thomson, Jeff Harrison, John Goldberg, Vernie Hubert, Dan McGrath, John Riley, Wanda Worsham, and Callista Bisek.

## OPENING STATEMENT OF HON. STEVE GUNDERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. GUNDERSON. Good morning everyone. The subcommittee on Livestock, Dairy and Poultry will come to order.

This morning, we meet to consider H.R. 3762, the Dairy and Livestock Producer Production Act, which I am pleased to have recently introduced with my colleagues Pat Roberts of Kansas, Congressman Tim Johnson of South Dakota, and Ray Thornton of Arkansas.

The whole issue of producer security is not new. In fact, several Federal laws, including the Perishable Agricultural Commodities Act and the Packers and Stockyards Act, are dedicated to promoting prompt payment to producers for their crops and commodities. Unfortunately, these laws do not cover each crop and every producer.

Noticeably absent from the commodities for which producer security is maintained is milk. This, of course, leaves dairy producer protection in the hands of various State governments, which in turn, leads to a lack of continuity in producer security, and in way too many cases no protection whatsoever.

Our most recent review of State dairy producer security laws indicates a wide variety of approaches from assessment funds in escrow accounts to security bonds and letters of credit. Most troubling is the fact that by our count 26 States either have very minimal or no dairy producer security laws at all.

As a result, hundreds of dairy farmers have gone without one or more monthly checks in the last decade. This has, in turn, forced many fine dairy farming families out of business. We will hear from one of those farmers whose personal struggle has been featured in *The Wall Street Journal* today.

The patchwork nature of State dairy producer security has led a number of Congressmen, including myself, to suggest a national solution to this issue over recent years. In fact, on two separate occasions, in 1984 and again in 1992, this subcommittee has held hearings on proposals to create a first lien on the assets of a processor in favor of producers who have delivered milk to that processor and have not yet received payment.

The bill we have before us today, which was prepared with significant industry input, takes a very different approach. It uses a one-time, 2 cent per hundredweight assessment on processors to create a \$30 million dairy industry reserve fund. Assets of the fund would be invested by a nine member board composed of producers, processors, and investment experts from different regions of the country.

In the event of a processor bankruptcy, affected dairy producers can then make application for up to 80 percent of up to 31 days of unpaid milk shipments to the bankrupt processor. In an effort to assure industry equity, the reserve fund would preempt State security laws and would apply to all processors, regardless of size or location.

With respect to the livestock producer protection provisions, let me first take a moment to recognize and welcome Senator Pressler from South Dakota. Senator Pressler has introduced nearly identical legislation in the other side, and I understand that he will be here to lend his support to our efforts here in the House.

The livestock dealer trust, as it has been referred to, enjoys support among livestock producer groups and the administration. In short, the bill establishes a trust for livestock producers to protect them in the event of a dealer or market agency insolvency.

When a producer sells his livestock on a cash sale basis, and not on credit, it is only proper that he should have priority lien on certain assets of a dealer or market agency in the event of a bankruptcy or similar circumstances. That's what this bill achieves.

Once livestock producers or cash sale sellers are made whole, creditors are then paid in accordance with the priorities established under other applicable law. The need for this legislation is illuminated by the fact that in the past 3 years, 59 dealers and market agencies have failed, depriving producers of \$12.4 million.

When all is said and done, it is estimated that producers will have recovered only \$2.1 million of this amount—a meager 18 percent. In light of these facts, and the successes met by other producer trusts, I believe this is the right time to move forward with the kind of protection for our Nation's livestock producers.

As you can see, the Dairy and Livestock Producer Protection Act has been assembled with very significant industry input. We are, of course—that's why we're holding the hearing—open to suggestions from industry representatives who are assembled here today. We look forward to their testimony, and now I would recognize my colleagues for opening statements.



Mr. Johnson.

**OPENING STATEMENT OF HON. TIM JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH DAKOTA**

Mr. JOHNSON. Just very briefly, Mr. Chairman, and I would also want to extend my welcome to my senior Senator, Senator Pressler, to the subcommittee today.

Mr. Chairman, I appreciate the opportunity to work with you to craft legislation which will protect our Nation's livestock and dairy producers from financial harm resulting when purchasers of their production fail. I commend you on moving forward on this legislation by holding this hearing today. And given that these hearings can run long, I will keep my comments very brief and focused on the dealer trust provisions of the legislation.

With the cattle producers in my State and others facing devastatingly low prices for their calves this fall, it is critically important that they not suffer the further hardship of not getting paid if the purchaser of their livestock fails financially.

The livestock dealer trust provisions in this legislation will help the Grain Inspection, Packers, and Stockyards Administration to step in effectively when livestock dealers fail to protect the interests of livestock producers. Market agencies selling on commission have long been required to handle funds received from the sale of consignors' livestock as trust funds, and to use a special bank account designated "custodial account for shippers' proceeds."

The Packers and Stockyards Act currently provides for a statutory trust to cover livestock sales to meat packers in the event of a business failure or otherwise fail to make a payment. The provisions in this legislation match closely with the packer trust provision, and it makes good sense to extend these provisions to livestock dealers.

I also want to take a moment to express my appreciation to Jim Baker, Administrator of the Grain Inspection, Packers and Stockyards Administration, for his efforts to work with us to get these changes enacted.

Again, I am very supportive of these provisions and hope to work with the chairman and other members of the House Agriculture Committee to move this legislation expeditiously forward.

Thank you, Mr. Chairman.

Mr. GUNDERSON. Thank you very much.

With that, we recognize our colleague and friend from the other side of the Hill, Senator Pressler. You are recognized for as long as you choose.

**STATEMENT OF HON. LARRY PRESSLER, A SENATOR FROM THE STATE OF SOUTH DAKOTA**

Senator PRESSLER. Well, it will be very brief, and I thank this committee very much, on both sides of the aisle, for your kindness in letting me say just a few words.

I want to commend this committee and your fine staff for your dedicated work in addressing the many needs facing dairy and livestock producers today. I can say with no hesitation that South Dakota producers greatly appreciate your leadership. Your tireless efforts to establish a livestock dealer trust, as well as your hard work

on other important issues, will bring needed solutions to problems facing the cattle and dairy industries.

I have followed South Dakota's cattle industry all my life. Now, as you know, I have introduced S. 1758, which would establish a livestock dealer trust and address other issues such as mandatory price reporting. That bill was developed as a result of two Senate hearings I have held over the last year to deal with packer concentration and other issues confronting cattle producers.

Establishing a livestock dealer trust simply is a case for fairness. I had sought the inclusion of a livestock dealer trust in the farm bill. I did so because it's necessary that the trust be established. I am hopeful we can obtain congressional approval.

Mr. Chairman, I am ready to work with everyone on a bipartisan basis to make this happen. I believe we have an opportunity to enact a number of important initiatives to help our cattlemen. I would like to discuss briefly two of these initiatives.

First, the Congress should remove the existing ban on the interstate shipment of State-inspected meat and poultry products. I have introduced S. 1862, along with Senator Hatch, to do just that.

Again, Mr. Chairman, you have been a recognized leader, and this committee has been on this topic for 14 years. Recently, USDA Advisory Committee on Packer Concentration endorsed lifting the ban. I want to work with you, Mr. Chairman, and members of the committee, to see that this ban is lifted. Doing so would help bring needed competition in marketing livestock products and place small processors on a level playing field with the giant packers in foreign countries.

A second subject that has been before us is packer concentration, and I have been pressing the Clinton administration to take action, and that is a subject which we must continue to work. We can pass a number of initiatives here in Congress. I have touched on a few. Yet only by ensuring full enforcement of existing anti-trust laws will we restore long-term economic health to the U.S. cattle industry.

Mr. Chairman, support for these measures is growing, and I hope that with the continued leadership of you and your committee this Congress can approve H.R. 3762 and S. 1862. Together we can do the right thing for our Nation's cattlemen.

Again, I want to thank this committee very much, and I submit the remainder of my statement for the record.

[The prepared statement of Senator Pressler appears at the conclusion of the hearing.]

Mr. GUNDERSON. Thank you very much, Senator. Let me indicate that on the other issue you brought up it is the hope of at least this individual that we will in the very near future introduce comprehensive meat reform legislation that will, to a certain degree, reflect the Mega Reg. and other issues that you've talked about.

We are circulating a draft document at this point with my colleagues on the Democratic side, because we believe it can, it will be, and it should be a bipartisan bill when it comes in. So that's likely to happen in the very near future.

Any questions for Senator Pressler? If not, Senator, thank you very much.

Senator PRESSLER. Thank you very much. I thank the members of the committee.

Mr. GUNDERSON. With that, we call our second panel, Mr. James Baker, Administrator, Grain Inspection, Packers, and Stockyards Administration, U.S. Department of Agriculture; and Mr. Lon Hatamiya, Administrator, Agricultural Marketing Service, U.S. Department of Agriculture.

Gentlemen, you are no strangers to this subcommittee or to this full committee. Your entire statements will be made a part of the record. We invite you to summarize those statements to the best of your ability.

Because we are going to go in session this morning and anticipate votes, I would recommend to the Clerk that we try to follow the 5-minute rule to the best degree possible. Where that's not possible, just let us know and we'll try to accommodate you and succeeding witnesses in that regard.

Gentlemen, you can proceed as you so desire.

**STATEMENT OF JAMES BAKER, ADMINISTRATOR, GRAIN INSPECTION, PACKERS AND STOCKYARDS ADMINISTRATION, U.S. DEPARTMENT OF AGRICULTURE**

Mr. BAKER. Thank you, Mr. Chairman and members of the subcommittee. I appreciate the opportunity to comment this morning on the Dairy Livestock Producer Protection Act of 1996.

My remarks will focus on the statutory trust for livestock sellers in the Title II of the bill, which amends the Packers and Stockyards Act by adding a statutory trust to benefit livestock sellers who sell livestock to dealers and market agencies buying on commission, mainly order buyers.

The Department supports dealer trust legislation. A statutory dealer trust would require dealers and market agencies who fail to pay for livestock to hold all inventories, proceeds, and accounts receivables in trust for the benefit of the unpaid cash seller. The failure of livestock dealers and market agencies to pay for livestock purchases account for a significant amount of unrecovered losses in the livestock marketing chain.

While a dealer trust will not provide 100 percent recovery for unpaid sellers, it will minimize the losses currently experienced when dealers and order buyers fail financially.

Market agencies selling on commission, such as auction markets and commission firms, have long been required to handle funds received from the sale of consignors' livestock as trust funds. They are required to use special bank accounts designated "custodial accounts for shippers' proceeds" into which all collected proceeds must be deposited, and then all proceeds are disbursed to consignors.

In 1976, Congress amended the P&S Act by establishing a packer trust requiring meat packers to hold inventories and proceeds or receivables from the sale of meat in trust for unpaid cash sellers of livestock. Since this amendment became effective in 1976, livestock producers have received \$47 million in recovered funds.

The P&S Act was amended again in 1987 to establish a poultry trust benefiting poultry producers. Poultry producers have recovered \$7 million since the establishment of the poultry trust. There

is no similar protection for livestock sellers when they sell to a livestock dealer or market agency.

Dealer financial failures represent a significant amount of losses in the livestock marketing chain. Over the past 3 years, 59 dealers have failed financially, owing approximately \$12.5 million, and we've been successful in recovering only \$2.2 million from these dealers. That's only about 18 percent.

A dealer would have minimized the losses suffered by producers because dealer's failure to pay in many instances would have resulted in significant recoveries for unpaid sellers.

Livestock producers are currently under financial pressure due to low livestock prices, drought in some regions, and high feed costs. Declining and lower prices significantly increase the risk of financial failure for livestock dealers. In a time like this, the dealer trust is of most particular importance.

The Department supports dealer trust legislation. We believe some minor changes are needed to clarify the proposed legislation. We suggest the following:

Remove the word "the" on line 12 of page 20. This would clarify all accounts receivable and proceeds derived from the sale of livestock by a dealer or market agency that are subject to the trust and not just the receivables and proceeds from the trust claimant's livestock. Under the trust provisions currently contained in the P&S Act, all receivables and proceeds are held in trust as a pool for the benefit of the unpaid sellers.

There is no requirement to trace or identify a specific sellers' receivables or proceeds. The pooling of the procedures simplifies administering the trust and allows the sellers to be paid on a pro rata basis when insufficient trust funds are available to pay all livestock sellers.

The definition for a market agency in the proposed dealer trust legislation is different than the Section 301 of the Act. Since this term "market agency" is already defined in the Act, the definition is unnecessary and will lead to confusion in enforcing the Act, and we suggest removal.

I would suggest an additional technical insert for clarification. The word "unpaid" needs to be inserted before the word "seller" on line 24 of page 20 and on line 3 of page 21, so that the trust beneficiary is clearly described.

Mr. Chairman, we would be happy to work with you and your staff on the suggested changes. Thank you for an opportunity to present the Department's views, and I applaud your efforts to get this done post haste.

[The prepared statement of Mr. Baker appears at the conclusion of the hearing.]

Mr. GUNDERSON. Well, we're going to try to move as quickly as we can. Thank you very much.

Mr. Hatamiya.

**STATEMENT OF LON HATAMIYA, ADMINISTRATOR, AGRICULTURAL MARKETING SERVICE, U.S. DEPARTMENT OF AGRICULTURE**

Mr. HATAMIYA. Good morning, Mr. Chairman and members of the committee. I greatly appreciate this opportunity to appear be-

fore your committee to discuss the dairy industry security reserve fund provisions of the proposed Dairy and Livestock Producer Protection Act of 1996, H.R. 3762.

Accompanying me today is Mr. Richard McKee, director of our Dairy Division in the Agricultural Marketing Service; and Mr. Ken Vail of our Office of General Counsel.

In the interest of time, I will briefly summarize my prepared testimony and ask that my full statement be entered into the record.

The Department generally supports an industry's efforts to help itself and has considerable experience overseeing industry's self-help programs. However, we have a number of concerns about the provisions of Title I, which should be addressed before we can support this proposal.

In reviewing the proposed legislation, the Department notes that the bill may overlook the essential role that producer cooperatives play in marketing their members' milk. In this regard, the bill's definitions of milk handler and process appear to be unclear. If the bill applies solely to persons who acquire milk from producers, and that milk goes into the bottle, then the bill could place an extreme administrative burden on milk producers' cooperative associations.

Under this interpretation, fluid milk processors would be subject to the bill's provision, but dairy product manufacturers would not, thereby requiring cooperatives and possibly others to set up elaborate accounting systems to determine the daily disposition of milk for each of its producer members.

On the issue of oversight, the bill gives the Secretary the responsibility to oversee the board with only limited oversight authority. The bill does not empower the Secretary to approve or disapprove the board's actions including budgets or contracts, to require information from the board, or to review the board's activities through an audit. Adequate oversight authority by the Secretary is central to an effective program.

Also, the bill may still leave producers somewhat vulnerable to the failure of milk handlers to pay producers for their milk. The board would determine if a milk producer can receive a payment on the producer's claim of non-payment by a milk handler due to the handler's bankruptcy under Title XI of the United States Code.

Under H.R. 3762, a milk producer may receive 80 percent of the total amount unpaid on account of bankruptcy, but only for a 31-day period. I want to emphasize that fact. Yet more than 31 days may elapse between the initial date of nonpayment and the date on which a handler declares bankruptcy. Moreover, the bill does not provide a means for a producer to appeal the board's determination, other than filing a civil lawsuit against the board.

With regard to the financial failures of milk processors across the country, the Agricultural Marketing Service has only limited and incomplete information. The only information that we have relating to the financial failure of milk processors is when we authorize our milk market administrators to write off monies owed to the various producer settlement funds under milk marketing orders.

From 1980 to date, our recovery on those producer settlement fund obligations averaged only 8.1 percent of the amount owed, for a total of \$500,000 of the \$6.2 million owed.

More specifically, information on those financial failures over our most recent 6-year period, from 1990 to 1996, is somewhat limited because the bankruptcies have not yet closed. However, we do know what the processors owed producers at the time of the bankruptcy petitions.

For example, those bankruptcies include Finast Foods in February 1991, a total of \$10 million was owed; Hawthorn Melody, Inc., in February 1992, \$13 million was owed; Foremost Dairies Northwest, in February 1991, \$3.2 million was owed; Cumberland Farms, in May of 1992, \$5.8 million was owed; Pine State Creamery Company, in March 1993, \$990,000 owed; and South Eastern Dairies, Inc., in April 1994, about \$973,000 owed.

In closing, Mr. Chairman, I emphasize that the Department is certainly sympathetic to the vulnerability of dairy farmers when handlers face bankruptcy. This is an area that is deserving of our attention, and we appreciate the opportunity to appear before your committee today on this topic. We'd be very glad to answer any questions that you might have.

[The prepared statement of Mr. Hatamiya appears at the conclusion of the hearing.]

Mr. GUNDERSON. Thank you very much for your concise statements.

Mr. Dooley.

Mr. DOOLEY. Thank you, Mr. Chairman.

Mr. Hatamiya, we have an analysis of some of the States that have different arrangements, and it appears that one of the proposals or policies which most States use in order to provide a level of producer security is dealing with the posting of a security bond, which a lot of States are using.

I was just curious from the AMS perspective, would a national program focus more on that rather than going to a security trust fund? Why would one proposal be better than the other?

Mr. HATAMIYA. Again, it is the position of the Department that we'll work with the industry and consensus of what works best. And I think, Mr. Dooley, you pointed out there are a number of States that have existing programs that address this very problem. I think we need to more clearly review some of the benefits of those programs and determine if that should be implemented at a national level.

But again, our review of the current existing programs shows there are about seven different types—bond security is one, escrow accounts, trusteeships, prompt pay legislation, letters of credit or other forms of security. So, again, I'm not going to take a position whether one is better than the other, but we are willing to work with industry and this committee to determine which is best.

Mr. DOOLEY. On the figure which is in terms of the security or producer fund is going—or the trust fund is going to be capped at \$30 million, do you—and I haven't had a chance to discuss it with the authors of the amendment, how was that figure arrived at? And do you consider that figure adequate? In California, we have a trust fund that is at \$21 million.

Mr. HATAMIYA. Well, that's one of the issues that I think I touched upon in my testimony in regards of whether or not it addresses the sufficiency of the amounts that might be incurred in

terms of collection. But based upon what our recent information is, and on what recent bankruptcy is, it probably would cover what I just outlined in terms of what is existing and what is owed to producers.

But again, we can't anticipate what might happen in the future in terms of future bankruptcies. So that question is really—it's unclear to me whether or not it is sufficient for the future. But under current existing information, we believe it is.

Mr. GUNDERSON. Thank you.

Mr. Smith, are you ready?

Mr. SMITH. Mr. Chairman, I would never say I'm not ready.

Mr. GUNDERSON. All right.

Mr. SMITH. I don't have a good evaluation of what different States are doing. I know in Michigan I introduced legislation, for example, on grain that gives the farmer the priority in case of a bankruptcy. Michigan has also been aggressive in areas of trying to assure that milk producers get their money if it's owed in the case of an insolvency.

How many States have got dairy covered? How many States have got livestock covered with their own State laws? And help me understand why it's necessary to expand a Federal law to have a checkoff to pay for insolvencies with dairies.

Mr. HATAMIYA. Mr. Smith, let me try to answer your first question on dairies on the number of States. We believe there are approximately 25 States that have legislation that covers some kind of security to dairy farmers. And again, it varies, as I've just mentioned in my previous answer, on the coverage that's provided for dairy farmers.

Again, we're willing to take a look at whether or not some of those provisions are applicable on the Federal level, and we're willing to work with you and work with industry to determine what is best.

Mr. SMITH. Was there another comment? In terms of help me understand, as a dairy farmer I never did quite understand the why such a large length of time in the requirements for the receiver to pay the producer.

Mr. HATAMIYA. If I could briefly summarize how a dairy producer is paid, and then I'm going to turn it over to my colleague, Mr. McKee, to get into more detail.

At the end of the month, let's take for example this past month of June, effective June 30, as a dairy farmer, you would have received a partial payment for the first 15 days of that month based upon the Class III price from the previous month, which is the month of May. Then 15 days later, which would have been the 15th of July, you'll receive a final payment which is based upon the blend price of the total amount that you shipped during the month of June.

And that's the reason for the delay, because the handler can't determine what the appropriate price would be until after the fact. I'll let Mr. McKee describe it in a little bit more detail.

Mr. SMITH. And, Mr. McKee, why don't you describe why they can't decide within a plus or minus 15 to 20 percent deviation from what the price would be at the day of receipt.

Mr. MCKEE. Under the Federal milk orders, we make the price announcement on, generally, the 10th to the 12th of the month. So the final payment is coming from the handler to the producers in that order; in most of our orders it's required that the final payments be made around the 17th to 19th of the month.

Mr. SMITH. What if we were to put in this law that 80 percent of the expected price would be paid within 5 days of receipt?

Mr. MCKEE. It would be very cumbersome to know what the expected price would be within a 5-day period after receipt by a handler of milk. Certainly, a mechanism could be constructed that way. But administratively, it would be pretty burdensome on the handlers.

Mr. SMITH. What's the difference from any one month to the next? What if we were to say 80 percent of the previous month's price? Would that ever, to your knowledge and your experience, be less than the current month's price?

Mr. MCKEE. Yes. In months when the price is going down, 80 percent would be an overpayment. In the months when prices are going up, handlers wouldn't have a problem meeting that obligation.

Mr. SMITH. Wait a minute. Wait a minute. Eighty percent of the previous month's price would be an overpayment? Milk goes down in price more than 20 percent in 1 month?

Mr. MCKEE. It could potentially be an overpayment of—

Mr. SMITH. Has it ever, in your experience?

Mr. MCKEE. No, it hasn't had a drop of 20 percent in 1 month.

Mr. SMITH. Okay. So it wouldn't be a problem if we put into the law, then, that 80 percent of the previous month's price would be paid in 24 hours like we do in livestock. I'm just trying to move this down a little bit. I'm a little frustrated with the producer carrying the responsibility for the interest on that money up to 44 days.

Mr. MCKEE. Without thoroughly looking at your 24-hour or 4-day—the implications of that on the operations of milk cooperatives, on the operations of handlers, I don't think I would be prepared to suggest that that would be something we'd want to move into without a thorough study.

Mr. SMITH. How would we go about studying that?

Mr. MCKEE. We would have to take a look at, from a handler perspective, the operation of the handler in making payments as prompt as that. We would have to take a look at it from the perspective of producer cooperatives.

Mr. SMITH. Excuse me. Mr. Chairman, there is a lot I'd like to learn. I mean, as we look at different commodities, and as we look at the PACA Act and the way we deal with repayment there, as we look at bonding or letters of credit the way we do in some States to assure payment, as we look at the fact that some dairy producers are going to be asked to pay a checkoff to cover the higher risks of other dairy producers, where some co-ops distribute this milk and gain their own assurance of the solvency, it seems to me like we're sort of penalizing everybody to carry, if you will, this kind of insurance when we just completed a process of deciding that in commodities we wouldn't require that farmer to pay for that insurance if he was willing to take the risk.



I hate to move out of the hole. Somehow it seems to me there is a middle ground without a total farmer checkoff, and I just throw that in for the record.

Thank you, Mr. Chairman.

Mr. GUNDERSON. The Chair would only point out that the assessment in the legislation in front of you was on the processor, not the producer. But I will also point out to my good friend from Michigan that the more he learns about this the more different positions he will come to appreciate, and recognize that like everything else in dairy there is never a consensus.

Mr. SMITH. If I may, I would also point out that the State sales tax in every State is an assessment on the seller and not the buyer. But, of course, we've seen how sales tax is added to your bill.

Mr. GUNDERSON. We're not getting into that one.

Mr. Peterson.

Mr. PETERSON. Thank you, Mr. Chairman. And I apologize for being late, but I was down at the White House trying to talk them out of the Northeast Dairy Compact, so I was doing good work. [Laughter.]

Mr. GUNDERSON. Were you successful? Do you have any announcements to make?

Mr. PETERSON. Hard to tell. It's hard to tell. But we let them have it anyway. [Laughter.]

Mr. PETERSON. I'm trying to figure out why we're doing this. I mean, maybe I'm missing something, but I haven't had anybody in my area that has complained about this. And I think we have a law—if I recall correctly, when I was in the State legislature we did this in Minnesota and we created the damndest mess that you have ever run into. And it took us years to straighten it out, and I think now they're at a point where it works pretty good.

What I'm trying to figure out is how does this square with what we're doing in all of these other areas? I mean, we're trying to move more responsibility to the States, trying to move welfare to the States, trying to move Medicaid, and now all of a sudden we're going to take and it looks to me like screw up States that are doing things right for I don't know what reason.

This bill apparently preempts all of these State laws so that there will now be a Federal program, and you have to do this the way the Federal Government says? How does that square with everything else that we're doing?

Mr. GUNDERSON. Very good question. First of all, I'd point out that Section 104 of the bill in front of you literally permits a State to make payments into the new Federal fund from its existing State fund in lieu of assessments on the processors in that particular State. So we've tried to figure out how to balance those two.

Why is this legislation in front of you? I think you will hear from a witness later on who literally was the victim of the lack of this kind of protection in the State of Washington.

Second, I think what we're—

Mr. PETERSON. Mr. Chairman, if I could—

Mr. GUNDERSON. If you'd let me finish and then I'll give you plenty of time. The reality is that we are moving to a deregulated national, if not international, dairy economy. I think everyone in

the room will agree that there will be much greater financial risk in this industry in the future than there has been in the past.

The question is, as we move forward, ought there be some kind of protection for dairy producers the same way we attempt to provide protection for poultry producers, livestock producers, and others in the industry? And that's the question that we have to ask here today.

Mr. PETERSON. Well, yes. My sense is that there's more of a need or pressure from the cattle side of things than there is from the dairy side of things. It almost seems like the dairy got thrown into this.

I've sat through I don't know how many hundreds of hours of negotiations trying to work out the Medicaid thing with the governors and everything and what we ended up trying to do was to create a Federal guarantee of a State entitlement, to try to find the middle ground.

Instead of setting up a Federal program, why wouldn't we put a mandate on the States that they provide this kind of program and let them do it? And send the money along with it to set it up, rather than try to preempt everything and set up a Federal program. It just seems contrary to everything we're doing.

Second, I'm not convinced that we're going to do this right. I think my judgment or my experience when we try to set up these Federal programs is that we're more likely to screw it up than to do it right. Did anybody look at setting some kind of a State mandate, and if the State has a law, fine, if they don't that they have to set one up? Couldn't we solve the problem that way rather than setting up a Federal program?

Mr. GUNDERSON. We have, since 1984, looked at almost every option we could figure out to deal with this issue. And as I said earlier, we are consistent in suggesting that there is no more of a consensus today than there was in 1984 as to what is the right way to do it.

I would suggest that, unfortunately, the lack of a consensus might provide you with a reason why we need to do something in the future, and that as dairy becomes much more deregulated, as there is not an automatic formula, an automatic floor, et cetera, I think you are going to witness those kind of financial disasters in the future.

We can either say we did it ahead of time and we had a solution, or we can respond to that unfortunate situation when it occurs in the future, whichever becomes the wish of the committee.

Mr. PETERSON. But couldn't you accomplish the same thing by having the States be required to provide this—

Mr. SMITH. Would the gentleman yield? How would that work? We send our milk down to another State, and so that's part of where the complication comes in.

Mr. PETERSON. Well, but in Minnesota we have protections, and that is going to be for anybody that does business in the State, not just producers that live in Minnesota, as I understand the way it works. I just think that most of the States have laws that work already.

So rather than screw them up, why not just put a requirement on it. If there's a problem in Washington, why don't we require

that Washington have some kind of a similar law and mandate them do it. That's what we were trying to do with Medicaid.

We were trying to get rid of the Federal entitlement but keep it at the State level, and try to have the Federal Government be the one that enforces the State providing that Federal entitlement. We could do the same thing here, it seems to me, and it would be more consistent than what we're trying to—I mean, with everything else we're trying to move that direction, here all of a sudden we're going to go the other way. I mean, I don't know how I'd go home and sell that to people, you know?

So unless——

Mr. GUNDERSON. Do you have any questions for the witnesses?  
[Laughter.]

Mr. PETERSON. Well, I don't know. I mean, are you guys—think that this is something we should be doing?

Mr. BAKER. I think you're on the right track on the dealer trust part of it. Now, I can't speak to the other. I don't know. I have never milked any cows, but I have lost money dealing with dealers and you're on the right track there. I'd like to make that comment.

Mr. PETERSON. Do you mean in terms of——

Mr. BAKER. The livestock dealer trust part of this bill.

Mr. PETERSON. We need that.

Mr. BAKER. We need that.

Mr. PETERSON. Yes. Well, that could well be. But again, why couldn't the States, why couldn't we, rather than set up a Federal law, why couldn't we just make sure that every State has an adequate response to this?

Mr. BAKER. We're asking for the dealer trust to be an amendment to the Packers and Stockyards Act, which is covered under the Federal law.

Mr. PETERSON. Well, I understand. But, I mean, why couldn't we do this the other—why couldn't we have the States do this? Can you tell me what—I mean, you must have a lot more confidence in the Federal Government than my constituents do, or even I do. I mean, frankly, we'll probably screw this up by the time we get done trying to implement it and you'll be back here complaining that it didn't get done right.

Mr. BAKER. Number 1, you won't get the States to all agree to it. And No. 2 is——

Mr. PETERSON. Well, I mean, I think there's ways we could force them to do this.

Mr. BAKER. Under the dealer trust?

Mr. PETERSON. Well, we could pass some kind of provision that if they don't comply we're going to take away—some Federal benefit. There are ways we could force them to do this.

Mr. BAKER. We presently have two successful examples on trust issues already that are working for the benefit of the producers, and we'd like to have this third one to cover the livestock producers. We have two successful ones already, with our livestock—with the packer trust and the poultry trust that we administer.

Mr. PETERSON. Well, but you're——

Mr. BAKER. And they're successful.

Mr. PETERSON. But in those cases you're dealing with a very few people, right? I mean, the packers, there aren't very many packers left, are there?

Mr. BAKER. Yes, sir. There are several packers.

Mr. PETERSON. How many are there?

Mr. BAKER. How many packers and dealers? What, 500 total? There are 2,600 or 2,700 that file reports with us.

Mr. PETERSON. Right.

Mr. BAKER. But there are numerous entities that deal with them, and there are many individuals that deal with those packers. I wouldn't have any idea how many individuals deal with those packers that are covered under the packer trust.

Mr. PETERSON. Well, does this bill cover, for example, the sales barns in my area?

Mr. BAKER. Every one of them I've talked to in your State, sir, is for this bill on the dealer trust.

Mr. PETERSON. Yes. But it would cover the sales barns and all of these other people that are—

Mr. BAKER. That would add protection to the livestock markets, yes, producers and the livestock markets.

Mr. PETERSON. But, they may be for it, but I guess I'm not convinced yet that there is a need for it in Minnesota.

Mr. BAKER. Well, in the case of Minnesota, last year one dealer failed better than \$8 million. I think they'll be able to write off their loss of better than \$5 million in that State, and many of the people in that area are drastically hurt financially because of it.

If we had had dealer trust I can't sit here and say we'd have recovered 100 percent of it, but we would have recovered a lot more than what was recovered, a high percentage, probably 75 to 80 percent.

Mr. PETERSON. What failed? Was it a sales barn or do you know?

Mr. BAKER. It was a dealer, livestock market dealer purchasing from producers and sale barns, auction markets and all.

Mr. PETERSON. Well, I guess I don't know that much about this. I just am reluctant to create another Federal system. You're going to have to convince me that this is a big enough problem, No. 1.

Number 2, this whole idea that somehow or another people doing business should not pay attention to the financial condition of who they're doing business with, somehow or another the Federal Government should protect them, for them not checking on things is—

Mr. BAKER. We're trying to create a trust, Congressman, that the individual gets protection, and we have tried to administer. But we have no funds put into it at the Federal Government's expense, except in the administration of it.

Mr. PETERSON. Oh, I understand that. But I've gone way over my time. I'll have to learn more about this.

Mr. GUNDERSON. All right. Mr. Hatamiya, you indicate in your testimony that it's critical to consider the impact on States with existing security funds. What other issues do you think we ought to consider on States before we deal with this? I mean, we talk about the fact that States have the ability to use their existing funds to pay their assessments. Help us. What other issues might you think we ought to look at here?

Mr. Smith brought up the issue of interstate shipment of milk and how that would or would not be protected.

Mr. HATAMIYA. Well, Mr. Chairman, I really think that we have to take a close look at—and again, I think it was pointed out by other committee members—what State programs are truly working and how effective are they, and is there truly a need for national scope on this. Again, that's some of our concerns, and not to say that again, we are very supportive of making sure that when there are bankruptcies occurring that those dairy farmers are protected, just like in many of our other programs.

Mr. Baker oversees, as he mentioned, the poultry and the packer trusts. I oversee the PACA, the Perishable Agricultural Commodities trust, and we have had experience where that has protected fruit and vegetable commodity dealers as well as producers, in terms of bankruptcies. So we believe there are effective ways of doing this. We're just not sure if there are other things.

I'm going to ask Mr. McKee, I'm not sure if there are other issues in terms of the existing State programs that could be brought to bear in this legislation that may make it more effective.

Mr. MCKEE. Mr. Chairman, honestly, we haven't taken a thorough review of the States and what they provide. The cursory review that we've done over the past week to 10 days would indicate that there is a plethora of items out there, that there are a mix-mash. It depends upon which State you live in how much protection you have.

Under the Federal Milk Order Program we have some payment provisions, however, that doesn't offer the kind of protection that one needs during a bankruptcy. Mr. Hatamiya brought up the need—certainly, back in 1990, 1991, 1992, there were a large number of bankruptcies in the dairy industry under the Federal Milk Order Program that impacted several thousand dairymen.

The last couple of years we haven't had that number of bankruptcies, so I think that factor needs to be looked at as well. Seemingly, when one bankruptcy occurs now it touches many dairymen and involves a great amount of dollars because of the size of handlers. But I don't know if we can construct an effective mechanism to deal with that eventuality because of the structure of the industry.

Certainly, we have concerns. We want to make sure that dairymen are paid what they are due when handlers go bankrupt. But I don't know if we have the answer for that.

Mr. GUNDERSON. If you did, it might be unique. Let me see if I've got this correct. USDA supports the livestock trust part of this bill. You probably do not support the dairy reserve fund.

Mr. HATAMIYA. Let me clarify that. We had concerns with the dairy reserve fund, as I think I expressed those. If some of those are addressed, we could support it.

Mr. GUNDERSON. But do you prefer a dairy trust over a reserve fund?

Mr. HATAMIYA. Again, referring back to the previous comment I made, Mr. Chairman, about we have existing experience dealing with trusts, and the applicability and the positive results that have been determined from that. We have experience there.

I want to refer back to the previous comment I made, too, is that we want to work with the industry to determine what makes the most sense. And so we're not prepared today to say that the dairy trust is better than the reserve fund. We need to take a close look at the various aspects of all of them.

Mr. GUNDERSON. There are some serious financial implications of doing a dairy trust than other elements of the industry, which is why I think over the evolution of this discussion we have seen a movement towards a reserve fund, not that people like that but they like that better than a dairy trust.

Mr. HATAMIYA. Right, Mr. Chairman, I think you point that out. I know there was major opposition to previous attempts at the creation of a dairy trust, and that's why we are willing to take a look at the reserve fund and how it might be best worked to determine if there are positive aspects.

Again, it is all based upon whether or not it can benefit the dairy producer who is affected by the bankruptcy, and that is our major goal, and we want to work with you to provide that benefit.

Mr. GUNDERSON. Well, I wish it was that simple. I can develop a bill that protects the dairy producer quickly, but it's going to be at the expense of other elements of that industry that aren't going to be very comfortable with that, or they're of the financial industry that's not going to be very comfortable with that.

So the question is, does the trust concept, which USDA seems most comfortable with on a number of other issues, how do you overlap that on the unique structure of the dairy industry? And if you don't do that, then is there a legitimate Federal response? If there is not a Federal response, then the question gets to Mr. Peterson, which is is there some kind of a minimum Federal mandate that ought to be required of States that participate in the Federal order system, or something like that? I mean, how do we bring this down?

And as I said earlier, we don't need to do this now. We can wait until in a deregulated dairy economy we have a bigger catastrophe, and we have an emergency meeting of this subcommittee to deal with it. I mean, that may be where this thing ends up.

I would think it would be in all of our interest to see if there is a consensus before we get to that point.

Mr. HATAMIYA. Mr. Chairman, we don't have a crystal ball on what the future holds for the dairy industry. I don't have an answer for you. I wish I could tell you what's the best protection that can be applied.

Again, we're busily in the process of changing the Federal marketing order system, and we'll have to take a look at that change as well as the coverage that you propose here and what makes the most sense. But again, I don't have that answer, and I don't know if anybody does at this stage.

Mr. GUNDERSON. Okay. Any other questions for the panel? Mr. Smith?

Mr. SMITH. Mr. Chairman, I apologize, I am going to have to leave, and then I'll be gone about a half hour and then be back.

Mr. GUNDERSON. So you're going to use up our time and leave. Is that what you're saying?

Mr. SMITH. No. Just so I'm going to just interrupt this committee to ask a question. For the dairy aspects of helping assure payment, if there were a shorter turnaround period for payment, or if co-ops or individual producers could require a bond or a letter of credit to cover the lag time of payment, would other legislation be as necessary or even necessary at all?

In other words, No. 1, if there were a requirement that the farmer received a substantial amount of the expected payment within 4 or 5 days of shipment, would there be a need for other considerations to assure payment? Is the lag time the main reason why we're looking—and, Mr. Chairman, next year I suspect we can call you up to give some of these answers because your response to this is probably as good as anybody's.

Is that the main reason that we are looking at this issue, because the lag time complicates and increases the probability that the farmer might not get paid in case of a bankruptcy or insolvency, or anything else? Is the lag time the main reason that we're concerned with this?

Mr. GUNDERSON. I think there are two reasons that we are concerned, because there are a number of States, first of all, that have no State protection. And as you indicated earlier, in the increasing interstate shipment of milk that becomes a more difficult and, frankly, a higher risk issue to deal with.

Second is the inconsistency of those State protections and whether there ought to be with milk, as there is obviously with fresh vegetables, with the poultry, the livestock, et cetera, whether there ought to be any kind of a consistent—

Mr. SMITH. I mean, we've got a lot of livestock dealers that ship their livestock every day, and every day they get a check being paid for that livestock. There's a 24-hour turnaround time for livestock. If that was the case in dairy, it would substantially reduce the risk of that dairy farmer not getting paid.

If federally maybe, as we've done in Michigan, in case of a bankruptcy or insolvency we put the producer at the top of the list—didn't you introduce a bill like that once? We put the producer at the top of the list in case of an insolvency or bankruptcy, and I know the bankers and the financial institutions get all shook up.

Mr. GUNDERSON. They aren't the only ones. If you think this is controversial, you ought to see that.

Mr. SMITH. Well, that's the law we passed in Michigan while I was chairman of the Agriculture Committee there. So I'm familiar with the controversy.

Thank you, Mr. Chairman.

Mr. GUNDERSON. If the gentleman from Michigan wants to introduce a bill requiring 24-hour payment for fluid milk, I invite him to do so.

Mr. SMITH. Well, I'll amend this bill if we're going to go ahead with this bill. [Laughter.]

Mr. GUNDERSON. Any other questions? If not, thank you all very much.

Mr. BAKER. Thank you, Mr. Chairman.

Mr. GUNDERSON. Let us now invite panel No. 3, Mr. Thomas Cook, vice president for government affairs, National Cattlemen's Beef Association; Ms. Nancy Robinson, associate manager, govern-

ment and industry affairs, from the Livestock Marketing Association; and Mr. William Knill, president, Maryland Farm Bureau Federation, on behalf of the American Farm Bureau.

All right. Mr. Cook, you're welcome to begin. As I told other panels, your entire statements will be made part of the record.

**STATEMENT OF THOMAS M. COOK, VICE PRESIDENT FOR GOVERNMENT AFFAIRS, NATIONAL CATTLEMEN'S BEEF ASSOCIATION**

Mr. COOK. Thank you, Mr. Chairman. I've got a very short statement, and I'll be brief. I do want to thank you and the subcommittee for the opportunity to present this testimony regarding the establishment of a livestock dealer trust.

The National Cattlemen's Beef Association supports the provision in H.R. 3762 which establishes a livestock dealer trust for the benefit of sellers of livestock to dealers and market agencies buying on commission. The NCBA and its predecessor organization, the National Cattlemen's Association, has had policy for several years seeking a livestock dealer trust.

We have worked closely with the House Agriculture Committee staff, and before that the Senate Agriculture Committee staff, and coordinated with interested parties in the livestock industry to formulate a bill that meets our needs in establishing such a livestock dealer trust that is spelled out in this bill.

H.R. 3762 would amend the Packers and Stockyards Act to establish a statutory trust for the benefit of sellers to dealers and market agencies buying on commission. There already is, as stated before, a packer trust and a poultry trust that have been successful. There is no similar trust protection for livestock sellers when they sell to a dealer or a market agency buying on commission.

The livestock dealer trust provisions in H.R. 3762 would require livestock inventories and accounts receivable due from the sale of livestock to livestock dealers and market agencies buying on commission to be held in trust until all unpaid cash sellers have been paid in full. This provision also protects legitimate third party buyers from being impacted by a failed dealer or being subject to the trust.

The NCBA does not have a position on the dairy industry security reserve fund provisions of H.R. 3762. However, we are hopeful that agreement can be reached by the interested parties in this provision so H.R. 3762 can move swiftly through the legislative process.

We thank the chairman of the Agriculture Committee and the chairman of the Livestock, Dairy, and Poultry Subcommittee for their assistance in introducing this legislation and conducting these hearings. Thank you very much.

[The prepared statement of Mr. Cook appears at the conclusion of the hearing.]

Mr. GUNDERSON. Thank you.

Ms. Robinson.



**STATEMENT OF NANCY ROBINSON, ASSOCIATE MANAGER,  
GOVERNMENT AND INDUSTRY AFFAIRS, LIVESTOCK MAR-  
KETING ASSOCIATION**

Ms. ROBINSON. Thank you, Mr. Chairman, for the opportunity to appear before the subcommittee to voice the livestock marketing sector's support for legislation establishing a livestock dealer trust.

I am Nancy Robinson, associate manager for government and industry affairs for the Livestock Marketing Association.

The LMA is a national trade association representing 1,200 livestock markets, dealers, and affiliated businesses throughout the United States and Canada. LMA, as you are aware, supported the dealer trust amendment as adopted by the Senate in the 1996 farm bill.

Therefore, we are supportive of the Dairy and Livestock Producer Protection Act of 1996 being considered here today. Also, we appreciate Senator Pressler's introduction of a similar bill in the Senate.

As the members of the subcommittee know, the face of the livestock industry has changed dramatically over the past quarter of a century. During that period, we witnessed the rise in enormous growth of the commercial feeding industry. As the feedlot sector grew, so did the number and importance of livestock dealers as marketing agents for feeder cattle into those feedlots.

Along with more dealers, unfortunately, we also had more dealer transactions going bad with many sellers of livestock left unpaid for their labor. Over the years, a number of protections for the livestock seller who does business with a dealer were built into the current law.

These protections include such things as requiring livestock dealers to be registered with the Grain Inspection, Packers and Stockyards Administration, paying promptly for their livestock purchases, and retaining a bond to protect the seller's proceeds in the event a dealer fails to pay.

With all of these measures, however, the law still fails to provide sufficient protection for the livestock producer or other market agencies in the event a dealer becomes insolvent or fails to pay for livestock received. We believe a dealer trust will give the additional measure of protection to the sellers of livestock that is needed in the industry today.

As you've heard, the dealer trust would be very similar to the packer trust currently provided for in the Packers and Stockyards Act. Under a dealer trust, the livestock inventories or proceeds from the sale of livestock by a dealer would be held in trust until full payment has been received by all unpaid sellers.

We should add a caution here, however. The very way in which a dealer operates makes it unlikely that the trust can act quickly enough to capture and pay out the full amount lost by all sellers in every transaction. Since a dealer buys for his own account, he or she will necessarily turn over their inventory very quickly. Also, once a dealer begins to fail financially, it is likely there will be little bankable proceeds remaining from their livestock sales.

Therefore, the dealer trust should not be seen as a fool-proof remedy but only an additional tool in the protections afforded to livestock sellers under the Act.

Last, we are hopeful that an effort to take a more comprehensive look at other needed reforms of the Act will not end with this legislation. In fact, LMA has long advocated consideration of a payment protection fund similar to that being considered in the dairy trust provisions of this bill and used in several provinces in Canada as a more effective means to protect the proceeds of livestock sellers in this country.

Unquestionably, some fairly dramatic structural changes have occurred in the livestock industry over the past 25 years. However, during that same period only modest changes have been made in the Act in addressing those changes. For instance, the largest livestock marketing entities today—commercial feedlots—are not even covered under the Act.

These factors, along with recent questions about packer concentration and the development of ever new livestock marketing tools, i.e. electronic marketing, brings the relevancy and currency of present law into serious question. Thus, we strongly urge the subcommittee to return to this subject as soon as possible in the remaining days of this session or in the next Congress.

If time permits, Mr. Chairman, I now would like to enter into the record a very short statement on behalf of our sister marketing organization, the National Livestock Producers Association.

Mr. Chairman and distinguished members of the Livestock, Dairy and Poultry Subcommittee, on behalf of the member cooperatives of the National Livestock Producers Association, which represents some 240,000 livestock producers Nationwide, I relay to you our strong support of the creation of a livestock dealer trust provision under the Packers and Stockyards Act.

The Packers and Stockyards Act, and the rules and regulations promulgated under it, afford livestock producers a great deal of financial protection in the form of prompt payment for their livestock and fair marketing practices. Sellers of livestock to a registered market agency or packer are fairly well assured that they will receive payment for that livestock as a result of various protective measures in place, such as bonds, financial strength requirements, and in the case of a packer the packer trust provision.

Livestock sellers to a registered dealer, on the other hand, have much less assurance of payment, other than an inadequate bond and perhaps a few assets the dealer may have. The creation of a livestock dealer trust would help remedy this situation, as it would hold the dealer's livestock in trust for the benefit of the unpaid seller first.

The packer trust, which has been in existence for quite some time, has proven to be an effective vehicle for the payment of livestock, and it only seems logical that the same protections should be in place in regard to dealers. Again, we strongly support the creation of a livestock dealer trust and urge you to favorably consider legislation which would accomplish this safeguard.

Sincerely, Scott Stuart, CEO, National Livestock Producers Association.

That completes my statement, Mr. Chairman. I'll be glad to answer any questions you may have.

[The prepared statement of Ms. Robinson appears at the conclusion of the hearing.]

Mr. GUNDERSON. Thank you very much.

Mr. Knill.

**STATEMENT OF WILLIAM KNILL, PRESIDENT, MARYLAND FARM BUREAU FEDERATION, ON BEHALF OF THE AMERICAN FARM BUREAU FEDERATION**

Mr. KNILL. Thank you, Mr. Chairman. Chairman Gunderson and members of the subcommittee, my name is William Knill. I am president of Maryland Farm Bureau Inc. I am a cattle producer

and a former dairy producer. I am pleased to provide you with the comments of the American Farm Bureau Federation on the Dairy Livestock Producers Protection Act of 1996.

AFBF represents over 4½ million members nationwide, including the majority of the Nation's dairy farmers and livestock producers. American Farm Bureau has long sought ways to increase security for dairy producers. We have worked with you, Mr. Gunderson, and other members of the subcommittee over the past several years in attempting to find a way to address this issue through the Packers and Stockyards Act and other legislation.

We are keenly aware of the problems faced by producers when their milk handler declares bankruptcy. Dairy producers in all regions of the country have seen the future of their farms placed in jeopardy when faced with the loss of anywhere from several days to over a month's worth of income from their milk sales.

Given the current price volatility of dairy products, and the probability that this volatility will continue as we move to eliminate the price support program, producers are at an increased risk of such loss in the future.

While the most devastating impact on the producer, it must also be noted that a bankruptcy has a significant impact on the local businesses where the affected producers normally purchase feed and other supplies. Action is needed to address this problem area before it becomes larger. The supporting industries in a rural community is dependent on these other industries, and it has an impact on them also.

Several States have sought to protect their producers from such monetary losses. A variety of approaches have been tried, but many States still have no system in place. Existing State programs range from being quite successful to some of rather limited value to the producers.

American Farm Bureau policy states:

We support a national dairy plant security program to enhance a producer's ability to recover losses due to the financial failure of milk handlers or cooperatives. All of those procuring milk from producers should be included in the program. We urge that those procuring milk from producers pay more promptly. Producers should also have a priority lien on their milk. However, we oppose creation of a mandatory fund financed by a checkoff on dairy farmers to guarantee milk checks.

As you can see from our policy, and from past actions, AFBF strongly supports increased producer security. However, we must express concern over provisions in the proposed legislation that would preempt all State and local programs. In cases where programs are in place that provide adequate protection to producers, the option should be provided for those States to opt out of the national program.

Adequacy of the existing State programs should be determined by independent review of the programs. In cases where adequate programs exist, producers should be allowed to vote on whether to maintain their existing program or participate in the national program. Along with the opportunity to maintain existing programs, there would need to be a provision for producers in a State who vote to remain outside the national program. This provision would not allow for recourse to recover future losses from the fund.

You will note that our policy also opposes creation of a mandatory fund financed by a checkoff on dairy farmers to guarantee

milk checks. We appreciate the fact that the proposed legislation specifies that the money collected for this fund is to have no effect on producer prices. We would ask that this be monitored closely to ensure that there is no adverse affect on producer milk prices.

Regarding Title II of the proposed legislation, "Statutory Trust for Livestock Sellers," AFBF strongly supports the language included. Our own policy states, "We support amendments to the Packers and Stockyards Act to extend prompt payment requirements to the wholesalers and retailers of livestock products. We support incorporation of a dealer trust provision to the Packers and Stockyards Act."

And also, "The bonding requirement for livestock dealers and packers should be reviewed on a regular basis and reflect the volume of the maximum financial exposure to producers and/or their brokers and then be made available to the public."

We urge the committee to move forward with the provisions on the trust for livestock sellers as rapidly as possible. If need be, this should be done in separate legislation. Given the current severe economic problems faced by livestock producers, it is critical that producers be provided with assurances that they will be paid for the animals they sell.

Mr. Chairman, thank you for the opportunity to make these comments. Farm Bureau members appreciate your interest in providing greater certainty that producers will be paid for the food that they produce.

Thank you.

[The prepared statement of Mr. Knill appears at the conclusion of the hearing.]

Mr. GUNDERSON. Thank you very much.

Mr. Volkmer.

Mr. VOLKMER. I only have a question. Mr. Cook, I understand your strong support for the legislation. I think it will help solve some problems out there. Ms. Robinson talked very briefly about perhaps we should look at other things to try and assure that producers receive their payment. This helps a great deal, but it doesn't necessarily, in my mind, assure that producer as against a market agent or dealer who just isn't honest. Does it?

Mr. COOK. Well, I think this goes in that direction. I mean, I think this is a tool in that direction.

Mr. VOLKMER. I agree with that. But it's not 100 percent. If he takes livestock and gets rid of it real fast, and takes the money and goes, then nothing in here is going to help anybody. If all of his livestock, and he has no other assets, there is nothing in here that is going to protect those producers, is there?

Mr. COOK. That is true. Under this—what it is it's going to try and seize all of the accounts receivable and the inventories he has. And that, as Ms. Robinson said, is not going to be 100 percent—could not be 100 percent of the loss. But it is a step in the right direction.

Mr. VOLKMER. I'll agree with that. It's an improvement. There is no question about that. And it should be very helpful.

Ms. Robinson, you mentioned—what exactly are we talking about?

Ms. ROBINSON. Mr. Chairman, in a couple of Canadian provinces they have something similar to what you're looking at here in terms of a reserve fund—we call it a payment protection fund—in which there is an assessment on dealers, markets, packers, or whatever, that goes then into a fund. And then, when there is an insolvency or a failure to pay, monies are drawn from that fund. They have been very successful. Obviously, we have a lot larger livestock industry in this country than in those provinces of Canada.

But we certainly have been trying to take a look at it in terms of how it might provide full protection versus some of these bandaid kinds of approaches that we've seen before.

Mr. VOLKMER. Now, that fund is by not the producers, but by the people who are buying.

Ms. ROBINSON. Most of the funds in Canada are, right, on those who are buying or market agencies.

Mr. VOLKMER. Market agencies, right.

Ms. ROBINSON. Acting as a commission agent, or whatever.

I think one of the funds did have the assessment on producers for a short time, but then withdrew that. Most of them started out as much as 25 cents per animal. But when the funds grew very quickly they were able to drop them down to 5 cents or zero.

Mr. VOLKMER. All right. I have no further questions.

Mr. GUNDERSON. Mr. Peterson? Mr. Dooley? Then I guess it's my turn.

How do you all feel about the applicability of the statutory trust for livestock dealing only with dealers and market agencies with purchases exceeding \$250,000? Anybody have a problem with that?

Ms. ROBINSON. Mr. Chairman, from the market agency standpoint, because many of our livestock markets get taken, as some might say, by dealers, we—of any size, we would like to see that dropped to zero. But we are willing to compromise at that level. But quite honestly, we think all dealer transactions should be covered under this, regardless of the amount.

Mr. GUNDERSON. Any other problems?

Mr. COOK. Well, Mr. Chairman, that number is a compromise out of the Senate side. The administration's initial proposal was a \$500,000 exemption, and for practicality and in order to compromise that's what we came up with.

Mr. GUNDERSON. Mr. Knill?

Mr. KNILL. Yes. I would seem to think that the \$500,000 would be a compromise that would be addressing the most serious problems. Thank you.

Mr. GUNDERSON. How do you all feel about the provisions exempting bona fide third party buyers from the provisions of the trust?

Mr. COOK. That's something that we felt strong about with some of our members, Mr. Chairman, because in the poultry trust when you go to the packer you're at the end of the route. But in the livestock industry, you've got livestock producers dealing with—the animals have another phase, shall we say.

So we wanted to protect a legitimate buyer who bought, paid for, received receipt for those animals, having them be subject to the

trust if there was default. And we feel that this is good language that clarifies that.

Our friends at the Department indicated that that was already implied in the other trusts, but our members felt very strong that if it's implied it might as well be stated. So we felt—that's a very strong position for our members, that there is that clear protection for third party buyers. So that's a very strong provision for our membership.

Mr. GUNDERSON. Any other comments on that question?

Ms. ROBINSON. We also support that.

Mr. GUNDERSON. Mr. Knill, if I understood your testimony correctly, you certainly want to protect the State prerogatives to the degree possible that they have programs in the dairy security area. Is that correct?

Mr. KNILL. There seems to be State programs that probably are adequate, and maybe the producer should have the option of at least staying with the State program or going with the national program.

I will indicate that a State program alone, in lots of cases, would not have sufficient funds because of the movement of milk across State lines. A national fund would seem to have the monies necessary to take care of an issue, where an individual State might not, depending on the base of the company involved, the handling company.

Mr. GUNDERSON. Part of our challenge in solving the dairy security issue is that everybody thinks there ought to be a solution that they don't want to be a part of. I mean, if you exempt all existing State programs, if you exempt—by a certain size level, if you exempt certain States such as California, if you exempt cooperatives, pretty soon you've got a national program with really no players.

Mr. KNILL. Yes.

Mr. GUNDERSON. Then we've got to go back to the question and say, all right, are we better off literally, as Mr. Peterson suggested, defining some minimum standards that States have to develop in their programs?

Mr. KNILL. I think possibly by allowing the producers to make this decision, looking at their protection and where it would be in their best interest, I would rather not pass judgment one way or the other, but I know exactly what you're talking about, and we also have those concerns. But at the same time, to protect the individual States' opportunity, the producers in those States, to at least voice their opinion on it.

Mr. GUNDERSON. Yes. My concern is I don't think it is realistic or fair to design a Federal program that in the end says to five or six private processors, "You alone are going to be the financial contributors to a Federal security fund." I mean, that's not a viable solution, I don't think, to this when we get all said and done.

Mr. KNILL. It would appear not, yes.

Mr. GUNDERSON. Thank you all very much, if there are no more questions, for your presentations.

Mr. GUNDERSON. And now we'll go on to a bit more of a discussion on the most difficult part I think we're facing here today—that's the dairy security. Mr. James Barr, chief executive officer, National Milk Producers Federation; Mr. Michael Yeager, Deer

Park, WA; Mr. James Satori, president, S&L Cheese Corporation, representing the National Cheese Institute; Mr. Robert J. Kosman, vice president of operations for Kroger Company, representing the Milk Industry Foundation; and Ms. Rachel Kaldor, legislative director, for the Dairy Institute of California.

Mr. Barr, as always, welcome back to the committee. When you are ready, you may proceed.

Let me in particular, however, before we begin, and simply go through the process, Mr. Yeager, I want to extend to you a very personal and sincere welcome. I think everybody in the room ought to know that you paid your own funds in order to come here today to be a part of this because you felt so strongly about the issue. And it is unusual, unfortunately, that we have real citizens coming on their own, paying their own expense to testify, and I want you to know that that does not go without notice. So you're particularly welcome today.

With that, Mr. Barr, you are recognized and you may proceed.

**STATEMENT OF JAMES C. BARR, CHIEF EXECUTIVE OFFICER,  
NATIONAL MILK PRODUCERS FEDERATION**

Mr. BARR. Thank you very much, Mr. Chairman. I am Jim Barr, chief executive officer of the National Milk Producers Federation, and we do appreciate the opportunity to comment on the need for legislation to assure that dairy producers are paid for the milk that they market.

National Milk Producers Federation supports legislation to enhance payment security for dairy producers. However, the Federation does not support using a security reserve fund and imposes an assessment on cooperatives for this purpose.

The Federation recommends that the subcommittee adopt legislation modeled on the provisions of Section 5 of the Perishable Agricultural Commodities Act, which extends the trust concept to producers of fruits and vegetables, and in the process exempts trust protection between the cooperative and its members.

There is sound reasoning behind such an exemption. The cooperative is an extension of the farm operation into the marketplace, selling bulk fluid milk to a bottling plant as well as manufacturing for the sale of nonfat dry milk, cheese, or butter. The member is not selling milk to the cooperative. Rather, the members of the cooperative are selling milk, cheese, and other products in markets across the country.

To this end, cooperatives act as marketing agents on behalf of their farmer owners. Thus, the business relationship between farmer and cooperative is based on an internal business transaction which does not occur within the normal commercial activities of industry.

Therefore, in the event of a cooperative's bankruptcy, the exemption logically would prevent farmer owners of the cooperative from being paid by the cooperative ahead of other creditors. The Federation's support for a producer trust is contingent upon including provisions which exempt dairy cooperatives.

During the 1990's, Congress several times weighed the merits of establishing a dairy producer trust. In the 1990 farm bill debate, USDA submitted a report that cited several differences between

the situation in the dairy industry and that facing livestock, poultry, and fruit and vegetable producers, including widespread bankruptcies by livestock packers.

Milk producers and their cooperatives also witnessed numerous bankruptcies, some of major proportions by handlers. As consolidation of handlers proceeded at a rapid pace in recent years, a number of leveraged buyouts weakened the financial condition of major processors. The financial risk exposure for farmers increased with larger milking operations. Unfortunately, some dairy producers and cooperatives experienced major losses due to handlers declaring bankruptcy.

Dairy trust opponents claimed that imposing a trust requirement would cost approximately \$2 billion of industry assets, creating a financial burden. If so, can we conclude that dairy farmers and their cooperatives presently are extending a \$2 billion line of credit in unsecured credit? Lenders claim they would not extend credit to finance dairy plant operations unless farmers continue to provide a milk supply for the operation of unsecured credit.

To oppose assuring payments to dairy producers in the event of a bankruptcy, their claim that nothing should be done to protect farmers from catastrophic losses that they would suffer if they didn't get paid for milk is irresponsible.

Some States have addressed this issue in recent years. Today, we have a patchwork of different State laws that provide differing degrees of protection to producers in different States. While helpful, the State-by-State approach does not resolve all of the problems. What dairy producers need is a uniform Federal law to provide equitable protection for all U.S. dairy producers.

Mr. Chairman, the statutory precedent for a producer trust was established by Congress with respect to livestock, poultry, fruits and vegetables. Dairy producers need similar protection.

Federal legislation is needed to ensure that a hardworking dairy producer is paid for his labor. We welcome the opportunity to work with you to develop legislation to enhance payment security for dairy producers. In our view, the trust legislation, with an exemption for cooperatives, is the best alternative.

Thank you very much.

[The prepared statement of Mr. Barr appears at the conclusion of the hearing.]

Mr. GUNDERSON. Thank you.

Mr. Yeager.

#### **STATEMENT OF MICHAEL YEAGER, DEER PARK, WASHINGTON**

Mr. YEAGER. My name is Michael Yeager. My wife Ginger and I ran a dairy farm in northeastern Washington State, and we live near a small town called Deer Park. It's 35 miles north of Spokane. We have 2 children, Amanda, 15, and Luke, 14.

I don't have any credentials to cite for you. I am only a citizen.

Over these past 6 years, hundreds upon hundreds of State and Federal agricultural department workers and supervisors have asked me, "Well, who are you with?" Well, I'm not with anybody. I'm not with any group, organization, committee, or the like. I am here with myself. I am the sole representative of the 120 Washing-



ton State dairy farmers who lost \$2,700,000 in the 1990 Foremost bankruptcy.

Over 6 years and no one would stand for us, so today I humbly try to do so.

I want to thank the chairman for allowing myself and these other farmers to petition their Government, and I feel they earned that right, and I think their wages have been injustice.

I should give deep thanks to Mr. Charlie Stenholm as well. He is the only Congressman to call me back in 6 years, and he was quoted in the big newspapers. He said what the bank did was pitiful.

In June of 1989, the U.S. Bank of Washington, a \$23 billion Federal Reserve regional bank, made a careless loan, an ill-advised loan, a poor loan. U.S. Bank lent Mr. Michael Cameron, a Florida investor, \$24 million with which he purchased the milk processor to whom we shipped our milk. Unknown to the dairy farmers who shipped to that processor, Mr. Cameron had just dodged fraud charges by selling a company called Southern Bakeries in 1987.

Mr. Cameron had owned a number of companies all financed by down payment loans from his father-in-law, a wealthy man whom the bank had hoped to do business with. U.S. Bank lent the \$24 million to Mr. Cameron's corporation KMC Group, which would have held the stock of the company had it actually existed. There was no corporation. Clearly, the Federal bank should have known.

Mr. Cameron's down payment worked out to about 2½ percent down after loan arrangement fees of \$1½ million. Mr. Cameron took the company over, and he and his wife melted credit cards.

Soon, and as one would expect, the loan was in trouble just short of 11 months later. The farmers would pay with their livelihoods for the Federal bank's blunder. A sealed Washington State court proceeding in June of 1990 allowed the bank to start a foreclosure. None of the farmers that I represent knew of the risk to their income because we were blindfolded by the court there.

Mr. Cameron moved away and the bank took over running the company with an accountant they had requested to be a receiver. The accountant knew nothing of dairy processing, and the bank would have been better advised to consult with some of the panel members here on how to run a dairy processor. Under the accountant's and U.S. Bank's guidance, the company was run into the ground.

Knowing that Federal law forced the farmers to wait 45 days to be paid, the bank, now running the company, waited and I call this "the wait." The wait started October 1, 1990. U.S. Bank watched the farmers work for the next 45 days. They watched us labor and kept totals on our milk. On the 44th day of the wait, they seized our income, on the day before Thanksgiving in 1990.

There were 15 farmers in Montana. Two of those are left today. And there were near 20 in my county. I think only three of them remain. Their State refuses to submit figures. No one there will respond.

So we're left here, then, pondering this new Federal legislation in an effort to prevent similar callous financial destruction. We're left with these dairy farmers who have no government, and we'll

fix it for the future but we have to leave them behind. And I suppose that's fitting.

So I support the legislation, despite the fact that these people are ruined and left without recourse. They stand there, they are ruined, and they are abandoned by their Government.

[The prepared statement of Mr. Yeager appears at the conclusion of the hearing.]

Mr. GUNDERSON. Thank you very much.

Mr. Sartori.

**STATEMENT OF JAMES SARTORI, PRESIDENT, S&L CHEESE CORPORATION, REPRESENTING THE NATIONAL CHEESE INSTITUTE**

Mr. SARTORI. Thank you, Mr. Chairman.

My name is Jim Sartori, and I am president and chief executive officer of Sartori Foods, headquartered in Plymouth, Wisconsin. Sartori Foods manufactures and markets Italian-type cheese.

It is my pleasure to appear today on behalf of the members of the National Cheese Institute, a national organization representing manufacturers, processors, distributors, and marketers of all types of cheese and cheese products consumed in the United States.

It is our view that sound business decisions, as well as existing State regulatory and other voluntary programs that don't discriminate against financially responsible companies provide sufficient payment protection for dairy farmers. Unlike the livestock industry, there have been few bankruptcies in the dairy industry leaving farmers unpaid. In fact, since 1992, there has been only one cheese processor bankruptcy—Welcome Dairy in Colby, Wisconsin. And in that situation there were no losses to producers.

In addition, NCI believes creating a statutory trust program as proposed for the livestock industry would jeopardize the long-standing financial structure of the dairy industry. Because of the longer payment terms in the dairy industry than exist for the cattle industry, significant assets would be involved in such a trust for dairy and would eliminate the ability to use inventory and accounts receivable assets as a basis for obtaining required working capital as is customary in the dairy industry. And it would be especially difficult for smaller firms who traditionally rely on assets for partial security for lending arrangements.

Creating a trust that would designate certain assets as unavailable for collateral could force unsecured lenders to require collateral from companies who currently receive unsecured loans. Unsecured lenders would have to look to a smaller pool of unencumbered assets. The outcome of such a scheme would be to reduce the availability and increase the cost of financial resources for the dairy industry.

Imposition of a trust would result in over \$600 million in cheese industry assets that could not be used to obtain secured financing. This represents nearly 16 percent of total cheese industry assets, and over 30 percent of cheese industry net equity. It is also 3 times the \$200 million annual capital expenditures of the cheese industry.

In 1992, our organization surveyed individual States to identify existing laws and regulatory programs to provide payment security

to dairy farmers. We identified nearly 30 States that had some sort of program. You will find a chart of these programs attached to the back of my written statement.

These various State programs include special bankruptcy pools with contributions from processors and producers, mandatory bonding laws, filing acceptable financial statements or putting cash in escrow, letters of credit, and other measures—all intended to lessen the risk of losses to producers due to bankruptcies.

Because many of our member companies conduct business in multiple States, and buy milk from producers in more than one State, uniformity of regulations among States is something that our organization generally supports. In fact, for some companies it is an administrative, and often a financial, burden to meet the requirements of multiple State security programs.

Therefore, if a Federal program is to be implemented, it is essential that it include preemption of existing State programs.

While the members of the NCI believe no Federal payment security program is warranted, if one is enacted it is essential that the program, No. 1, allows the existing financial structure and payment terms of the dairy industry to remain unchanged; applies to all milk handlers equally, whether proprietary or cooperative; preempts existing State programs; and finally, continues to place some burden of risk on producers as incentive to proper financial management practices.

We believe the Dairy and Livestock Producer Protection Act of 1996 meets these tests.

Members of the NCI believe a Federal program is not warranted. But if a program is to be implemented, it is imperative that it not change the financial structure of the dairy industry, apply fairly to all handlers, and preempt existing State laws.

Thank you.

[The prepared statement of Mr. Sartori appears at the conclusion of the hearing.]

Mr. GUNDERSON. Mr. Kosman.

**STATEMENT OF ROBERT J. KOSMAN, VICE PRESIDENT OF OPERATIONS, KROGER COMPANY, REPRESENTING THE MILK INDUSTRY FOUNDATION**

Mr. KOSMAN. Mr. Chairman, my name is Bob Kosman. I'm the vice president of the Dairy Group for the Kroger Company, a Cincinnati, OH based company which owns and operates nine dairies in Georgia, Indiana, Kentucky, Michigan, Ohio, Tennessee, Texas, and Virginia. The Kroger Company is the largest grocery chain in the United States with 200,000 employees and annual sales of \$24 billion.

I serve on the board of directors of the Milk Industry Foundation on whose behalf I am appearing today. The Milk Industry Foundation is a national trade association for processors and distributors of fluid milk and milk products.

We are opposed to adopting trust provisions for the dairy that are similar to those applied to the livestock and poultry industries. Those laws provide a priority claim against a company's assets equal to the unpaid amounts owed farmers in the event of a bankruptcy. When a bankruptcy occurs, this priority claim would be

paid from the company's assets even before secured, as well as unsecured, debt.

Because of this priority claim on assets, assets available to secure normal loans to a business, such as mortgages on buildings, equipment, land, inventories, and receivables, would be reduced. Financial institutions would generally deduct these unpaid amounts owed farmers from the amounts of money they would otherwise be willing to loan, thus reducing the amount of financial support available to the industry.

Livestock and poultry processor companies pay farmers within a day or two of when they receive the livestock or poultry. Thus, the payables to the farmers are relatively low.

However, in the case of milk, the normal and customary payments are several days after the milk is received. This has been the system for payment in the dairy industry since its inception in the United States. In fact, these periods for payments have been fairly clearly and precisely incorporated in provisions of the Federal milk market orders.

Additionally, dairy farmers are paid based on how their milk is used. The actual utilization of the milk is not known until the month is completed. So final payment cannot be made until later.

Application of the same rules to milk transactions as are used for livestock would reduce total industry assets available as collateral for financing operations and capital expenditures by about \$2 billion.

This amount is to about 15 percent of the dairy industry's assets and one-third of the industry net equity. All of this structure would dramatically change the ability of many dairy companies to compete or even remain in business.

There is no history of major bankruptcy problems in the dairy industry. A 1992 letter from USDA and, more recent, one dated July 1996 list the total number of bankruptcies and write-offs as 85. You'll note there is an incorrect number of 77 in the statement submitted to the subcommittee, but the other numbers in the statement are correct.

That's an average of about five companies per year out of a total universe of about 2,000 companies in the United States, less than one-quarter of 1 percent per year. And if you add the total dollars stated in the letters from USDA, it comes to little less than \$50 million, a total value of all Federal order milk marketed during this period amounts to about \$207.5 billion. So the losses were less than .02 of a percent of the total value. This doesn't strike us as a problem deserving Federal law.

Even though no processes overall favor a Federal law in this area, if one is to be enacted, it is critical to do the following: Not alter the existing financial structure and payment terms of the dairy industry; apply equally to all milk handlers, regardless of whether they are a proprietary or a cooperative company; preempt existing State programs that guarantee payments by substituting a Federal program for State programs; and not eliminating the burden of risk on producers as impetus for sound financial management practices.

We believe the Dairy and Livestock Producers Protection Act of 1996 meets these tests. It establishes a fund which would consist

of monies collected via assessments on all milk handlers, irrespective. These assessments would be collected on all milk at the first point of processing. Payments would be made to dairy farmers in the event of processor bankruptcies but would be limited to cover only 80 percent of a month's loss.

Upon reviewing the history of dairy company bankruptcy, it appears a \$30 million maximum for such a fund is well above the amount needed, particularly since the board operating the fund would have borrowing authority.

Preemption of State and local law as imposed payment security requirements is a critical component. In some States these provisions are extremely costly and burdensome to comply with. In the end, prudent business practices and not Federal mandate protections are the best solution to payment security.

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to share the views of the fluid milk processing industry on this issue. Thank you.

[The prepared statement of Mr. Kosman appears at the conclusion of the hearing.]

Mr. GUNDERSON. Ms. Kaldor, you may proceed.

**STATEMENT OF RACHEL KALDOR, DIRECTOR OF  
LEGISLATION, DAIRY INSTITUTE OF CALIFORNIA**

Ms. KALDOR. Thank you.

Mr. Chairman and members of the subcommittee, my name is Rachel Kaldor. I am director of legislation for the Dairy Institute of California.

Dairy Institute is a State trade association representing the processors of approximately 85 percent of the fluid, frozen, cultured milk products and cheese manufactured in California.

We appreciate the opportunity to appear before you today. The purpose of our testimony is straightforward. Should legislation creating a dairy producer payment security fund be approved by this subcommittee, California processors and producers request an exemption for our already established and fully funded State producer security trust fund.

The reasons for granting an exemption are equally direct. California's producer security program is superior to any of the Federal alternatives so far proposed.

Specifically, California provides for recovery of nonpayment in the case of any applicable default, not only in the case of bankruptcy. California provides direct protection from default by handlers, not only for milk delivered to the first point of processing.

A full 35 days of milk shipment are covered under our fund. California requires handler bonding and licensing as well as the filing of contracts by the producer to be eligible for coverage.

Prompt payment laws remain in effect and are not waived in exchange for coverage under the fund. Contingencies, such as exceptions for short sales and coverage under new contracts and critical details, such as the status of brokers and agents, are fully outlined in the statute.

The California producer security trust fund program was created in 1987 after the bankruptcy of California's largest handler: the Knudsen Corporation. The Knudsen bankruptcy left California

dairy farmers without payment for over \$30 million in milk shipments.

Over the past 9 years, both handlers and producers have seen the benefits of a well-designed and administered program. The California producer security trust fund program is tailor-made to protect our State's dairy farmers from handler default and respond to changes in California's dairy industry.

The fund is maintained at a statutorily required level to cover 110 percent of the largest handler's monthly obligation, which is now approximately \$21 million.

Security charges will be reinstated based upon claims on the fund which deplete it or if changes in the industry structure significantly increase the largest handler's monthly purchases.

Excess interest earned by the fund is used to reduce producer and handler obligations to industry-funded programs of the State Department of Food and Agriculture.

And a seven member board comprised of three producers, two handlers, and two cooperative managers advises the Secretary of Food and Agriculture on the administration of the fund. The board has proven to be an objective and effective sounding board for proposed changes in the program.

California's Producer Security Act has strengthened business practices between handlers and producers operating within our State milk marketing order.

To be protected under the fund, the following conditions must be met. As I mentioned, contracts covering transactions must be filed by the producer with the department prior to a default. Spot sales are accepted. The handler, as I mentioned before, must be licensed and bonded. The producer must not have prior notification of handler ineligibility under the fund; for instance, due to a prior default. And milk must be produced and delivered to a plant in California.

The act has ensured sound credit practices by producers and their cooperatives. The fund is liable for no more than 35 days of milk shipments, as I mentioned earlier. Fund payments are subject to a \$200,000 deductible on each handler default. And sanctions on defaulting handlers encourage full compensation to affected producers without activation of the fund.

Mr. Chairman, I would summarize our testimony by emphasizing that California's producer security trust fund is one of the best examples of a progressive, steadfast, and cooperative effort by producers and handlers to establish a program which is fair and accountable to all parties who act responsibly in their business transactions.

The California producer security trust fund has proven its worth since its creation in 1987. The fund stands ready to handle a major handler default but has yet to be called upon to pay a claim.

A program that affords California dairy farmers superior protection and serves the needs of our State milk marketing order deserves to be preserved and provided an exemption under any proposal considered by this subcommittee.

Thank you.

Mr. GUNDERSON. Thank you all.

Mr. Dooley.

Mr. DOOLEY. Yes. Ms. Kaldor, I'd be interested in just if you could give us a little bit of an explanation of how the California system would have provided some protection to Mr. Yeager and preclude the disaster that he personally faced.

Ms. KALDOR. In that situation, Mr. Dooley, several things would happen. Number 1, the operation of the processor would be noticed to the industry in general, not just to the bank or whoever might be entering into a foreclosure or bankruptcy proceeding.

In addition to that, obviously this situation applies not just in a full bankruptcy but also in handler default. And so if this particular processor had gone into default or had changed and tried another avenue to resolve its problems, credit problems, those situations would be, again, covered under the fund.

The most important thing is that this act has put producers and handlers on notice of slow pay handlers and the need to clean up their act, as it were, make good on their obligations, so that they don't face the sanctions that are part of the Producer Security Trust Fund Act as well.

Mr. DOOLEY. Mr. Yeager, one of my colleagues, Mr. Peterson, talked earlier about maybe having more States assuming greater responsibility. I was just interested. Have you been in contact with any State officials in Washington advocating, as you have at the Federal level, that they put in place a producer security system? And what has been the reaction?

Washington, as I look over the analysis of the various protections for producers, has very, very few. And obviously you're a good example of that or bad example, I guess.

Mr. YEAGER. Yes. I tried that. I made that effort, but it's not an interest there. There's no interest in that.

And I think I did notice Mr. Peterson. I think he's left. But I can understand that. He said "Well, we're moving away from too much Government." I think that's what he was getting at. It's why would we want to do more of that. And I can appreciate that.

So I guess we're trying to figure out how to put this. You're saying we can't do that. I think his idea was we mandate to the States that you all set up a trust.

So then we would be saying that, well, we have a product here from agriculture. And now we want to protect the people that produce it. And we want each of these States to take that step, and this is what we want to do.

So now if you went to Washington in 1991, when they seized our milk checks from us, and if you went there and you said, "Well, this is what we want to do," you would run into a problem there because the State says that milk isn't an agriculture product. It's not defined as such.

In fact, I found in the end here that there was no definition whatsoever of what milk is. There was a Supreme Court decision there. And, at any rate, milk didn't qualify as an agricultural product.

So then if he said to the State of Washington or anybody there, "Well, we want to protect this," the Federal Government would say, "Well, yes. It's an agricultural product," so if you went to Washington and said that, there would be no definition of what it is.

So you'd be left out. So I don't know how he could mandate to a State to protect an agricultural product that doesn't exist.

Mr. DOOLEY. I guess just going on a little bit of a different tact, California obviously has a system which most of my producers and most of the processors seem to accept, but as I look at this issue and I step back almost outside to try to get out of the box a little bit—and this is going to be directed to you, Mr. Barr—it appears that what we're trying to do on the dairy provision is we're trying to provide some producer income protection. Now, when I look at this, it's that, really, the value of this is really to the producer.

And we heard the American Farm Bureau. We've heard you. And I hear from my producers that producers don't think that they have a responsibility to pay for this, that this should be the responsibility of the processors to pay for this.

But I guess when I look at it, I have a hard time totally accepting that. And I would just like to get a better rationale of why that is so because we have some processors out there that obviously are good faith actors. They're not causing the problem. They're not putting anybody in jeopardy. And, yet, we're saying they ought to be footing the bill for the bad actors out there.

I guess why should producers expect all processors and handlers to pay for an income insurance program?

Mr. BARR. I don't know that I have a good answer to your question, but let me just make a quick stab off the top of my head. It seems to me that in a business relationship, both parties to that relationship have a certain degree of control.

If I invest in a mutual fund and don't take the proper care to evaluate the safety and soundness of that fund and I lose my money in that fund, it's unfortunate, but certainly I'm not totally irresponsible for that particular circumstance.

And that's true in most business relationships, but if you take a look at Mr. Yeager here, Mr. Yeager produces a highly perishable product. And he has or had limited options as to where he was going to sell that milk. He really didn't have the same opportunity to determine the safety and soundness of that particular dairy.

He, I assume, had been doing business with it for a period of time. And we know from his testimony and if we read the article in *The Wall Street Journal* what would happen to him.

So it seems to me in the case of a Mr. Yeager, his ability to determine the safety and soundness of the institution that he's dealing with is limited. And that's one of the reasons that we claim that there should be an exemption for cooperatives.

As a member of a cooperative, I'm an owner of the business. I have a responsibility to know what the heck's going on and making sure that things are being done in a proper and things being managed in a proper way.

I'll then make one other comment here. I think we're moving into a much more high-risk environment. As Mr. Gunderson stated earlier during the hearing, we're moving into a totally deregulated environment in dairy. We're obviously moving and being pushed into an international situation, where we have all different kinds of risks that are simply not there today, fluctuations in currency rates, the different way that dairy products are bought and sold on



an international basis, as opposed to the way we do it in the United States.

So we're bringing more and more risk into the dairy business in the United States. So Mr. Yeager here, if he were at risk in 1990, he's going to be even in greater risk in 1998.

And I don't know if that answers your question, but that would be my best stab at it, Mr. Dooley.

Mr. DOOLEY. Well, I guess the issue, though, comes down to if we are providing an income protection plan, we're basically providing an insurance policy. What is the most equitable way to fund that?

I guess I'm a farmer. I sell a lot of hay to dairy farmers out there. And in California now, because of the feed prices and low beef prices, actually, we've got some dairy farmers who are on the verge of bankruptcy out there.

Now, I have to have some due diligence. We have a 2-week to 30-day period on when we get paid oftentimes, too. But I guess I would question whether or not the dairy farmers, who are buying hay from me and all the other folks, would be supportive of them contributing funds to create a trust fund or a protection plan for those of us who are selling hay to them because one of their neighbors might default.

I doubt if you did a survey of your members that any of them would support that.

Mr. BARR. Probably not.

Mr. DOOLEY. And some I'm coming back to it as if we really are trying to approach this from just an objective point and being fair and equitable. The exemptions for co-ops, which you're basing primarily because it's producer-owned, is if you look at it in that perspective, I understand the rationale.

But if you look back, clear back, if you start back from square one or ground zero again, if we're really trying to provide for producer income protection, why shouldn't all producers make a small contribution until we build this trust fund if that's what we want to provide as income protection?

Mr. BARR. Well, again, I'm not unsympathetic to that point of view. I think we have a number of problems here that we need to try to resolve if we're going to come forward with a piece of legislation.

I'm not unsympathetic to the California point of view that if they have a reliable State program, why in the world do we want to shove a Federal program down their throat if the California plan is working well?

On the other hand, I'm not unsympathetic to Mr. Sartori's point of view that if you're going to have a federally mandated producer trust of some kind, he doesn't want to be dealing or his companies do not want to be dealing with 30 or 40 of them. That makes a lot of sense to me, too.

So it seems to me that as we go forward with this, what we need to do is sit down and try to resolve some of these problems because I think our ultimate goal or at least our ultimate goal at National Milk would be that whatever happened to Mr. Yeager doesn't happen again. I think that would be our first and foremost goal in this whole situation.

Mr. GUNDERSON. Let me try to phrase this correctly. As I listen to all of the testimony, I get the impression that Mr. Yeager is the only individual in this panel who would support the dairy reserve fund legislation in front of us today if it were brought up for committee or Congressional action. And I guess I want to simply go down the panel and see whether I'm correct or not.

I'm not trying to ruin Mr. Yeager's self-financed initiative to Washington to make a change here, but am I correct, Mr. Barr, that if this legislation were to be voted on, your organization would recommend a negative vote?

Mr. BARR. Unfortunately, yes because our policy is, as you well know, that the cooperatives need an exemption from the process. But let me say again with that statement that I would be eager to work with you and to try to work out something that would be acceptable.

Mr. GUNDERSON. Mr. Sartori, am I also accurate that you would recommend a negative vote?

Mr. SARTORI. Well, we believe the regulations in place are adequate and that any action isn't necessary at this time. However, if it met the criteria that we're talking about here, we would not be totally opposed to it.

We would especially want to see it preempt the State laws. And also we would want it to be uniformly enforced, including proprietary and co-ops.

Mr. GUNDERSON. Mr. Kosman?

Mr. KOSMAN. Our position would be exactly the same, and that is that we don't believe it's necessary. However, if something were to be enacted, we certainly would want the elimination or preempt the State statutes.

And also we would want everyone in the industry. Since we compete with those people for a finished product, we would want all of the people paying into it equally.

Mr. GUNDERSON. Ms. Kaldor?

Ms. KALDOR. We would have to say that California should be exempted, because California would provide a producer, such as Mr. Yeager, with better protection and better coverage under our fund.

And, therefore, we would have a negative vote on this proposal as it stands today.

Mr. GUNDERSON. The problem we face, as I think you, Mr. Kosman, indicated in your testimony that this affects one-quarter of 1 percent of the producers in this country. But if you happen to be a part of that one-quarter of 1 percent, it affects 100 percent of your viability as a dairy farmer evidenced by the 120 farmers in the State of Washington who were destroyed by this.

Mr. Peterson suggested that we simply mandate that every State develop some type of dairy security program. Let me go down the panel again. Would you, Mr. Barr, support that if that's all we could do?

Mr. BARR. I think we would, Mr. Chairman. Again, I refer back to Mr. Sartori's comment. And I'm certainly not unsympathetic with the difficulty that they would have, but recognizing that there are a number of States around the country that do have effective producer protection plans in place from plans similar to the ones that you suggest here, the California plan, the various bonding pro-

grams that exist in some States, like Pennsylvania, it seems to me that that would be a workable alternatives to National Milk.

Mr. GUNDERSON. Mr. Yeager, do you believe it's necessary for us to mandate action by the State of Washington in order to have some kind of legislative protection?

Mr. YEAGER. I don't think it would work.

Mr. GUNDERSON. You don't think it would work?

Mr. YEAGER. No. I think you should just write a Federal law like the one that's proposed here.

Mr. GUNDERSON. Well, my problem is I have four organizations sitting next to you that all oppose that.

Mr. YEAGER. Well, I mean, I don't mean to be insensitive to their views, but I don't see anybody here that milks cows.

Mr. GUNDERSON. I don't disagree with you on that, but it's my job to pass laws, not milk cows. And I don't know how I can get this passed without more consensus than exists today.

Mr. YEAGER. Well, so then I guess that's democracy. It's 4 to 1. I lose.

Mr. GUNDERSON. Well, I hope that's not your definition of democracy, although I could understand that from the experiences that you've gone through. I happen to be one of those people who believes it's the responsibility of those of us in Government to try to find a compromise. I'm one of the people in this town who doesn't believe "compromise" is a dirty word and that we ought to see if there is some kind of a middle ground that can achieve your needs within the realms that the other individuals in this panel, frankly, can accept.

Mr. Sartori, would you oppose or support a mandate by this committee that states, "Enact some kind of dairy security legislation," undefined by us?

Mr. SARTORI. On a State level?

Mr. GUNDERSON. On a State level.

Mr. SARTORI. Yes, we would support that.

Mr. GUNDERSON. You would support that?

Mr. SARTORI. Yes, sir.

Mr. GUNDERSON. Mr. Kosman?

Mr. KOSMAN. You say undefined by you and require every State to do something?

Mr. GUNDERSON. That's correct.

We've heard Wisconsin and California. You tell me which State has the good program.

Mr. KOSMAN. Okay. I personally think that would be very, very difficult to accomplish. And I would not be in favor of that. As I said, if something has to be done, I think the things that we would look to as being the most fair would be to include all processors, including cooperatives as well as proprietaries, and collected equally across the board.

Mr. GUNDERSON. Ms. Kaldor?

Ms. KALDOR. Obviously yes.

Mr. GUNDERSON. You would support that?

Mr. Barr, if we had some kind of legislation which included cooperatives, would you, then, be forced to oppose that?

Mr. BARR. At the present time, we would, Mr. Chairman, but, again, I would like to temper that by simply saying I'd like to take

a look at it and then discuss it with our leadership to see if there's some way we could either support it or make suggestions as to how we might be able to change it to support it.

What I don't want to do here is to slam the door on this thing. I think we need to work with you or with John Frank, whomever, and try to see if we can't come up with something that's workable.

Mr. GUNDERSON. Do any of you believe that the \$30 million reserve fund figure is simply too high and that it's not necessary to be that level, that we could solve this problem at a significantly lower assessment, which could reach a middle ground that people could live with?

Mr. KOSMAN. I feel that way. The \$30 million is high, especially since there would be a provision that would provide for loan ability against it. So if the account, in effect, were overdrawn, you'd go back to the source and build the account up to pay down what it was overdrawn and reestablish it. The \$30 million to me seems excessive.

Mr. GUNDERSON. Can you help us with what you think would be a realistic number?

Mr. KOSMAN. I really can't say, but I would say a number of half of that would be sufficient, yes.

Mr. GUNDERSON. And I invite you if you want to talk to others of your colleagues and get back to us on what you think is a rational number.

I mean, we are obviously trying to solve Mr. Yeager's problem. We are also trying to solve it in a way that, frankly, there is a consensus in the industry because without that, we don't solve his problem. So we are very flexible in how we get there if we can move along that line.

One suggestion made to me during the hearing was that perhaps what we do is we simply mandate that processors not participating in State security programs would establish a bond as a form of protection with the provisions of no more than 31 days and no more than 80 percent of any farmer's income. How would you all respond to that?

Mr. BARR. I think they have a similar program, Mr. Chairman, in effect in at least Pennsylvania. I don't know that it's identical to what you're suggesting.

It seems to me again that that is a reasonable option that you might consider that would certainly protect Mr. Yeager and similar people from running into the kind of devastating situation that they faced before.

So, again, I think anything that we can do that will protect the assets of these farmers, who really, as I indicated earlier, are in a minimum position to protect themselves I think would be a step in the right direction.

Mr. GUNDERSON. Mr. Sartori?

Mr. SARTORI. Yes. I believe we have a law similar to that in the State of Wisconsin, and it seems to work quite well. We haven't had any bankruptcies on the cheese side since 1992, as I mentioned.

And we can exercise the right to bond or in your bond because you either financially can't meet the requirements or perhaps you

don't want to disclose financial information. And that seems to work and certainly provides protection.

And I think had that been in place, that type of legislation been in effect in Washington, it would have prevented the situation that happened to Mr. Yeager.

Mr. GUNDERSON. Mr. Kosman?

Mr. KOSMAN. I am going back and trying to understand exactly how you would monitor that and ensure it gets done. Congressman Smith is gone, but I think he has got a particular firm operating in the State that had a bond provision. And, yet, no bond was in place. So things can fall between the cracks.

When it comes down to really getting everything done at the State level, I don't know that having every State have their own bond program is going to provide the protection.

And I also believe that it may be more costly to the industry to go out and try to establish bonds in lots of States than it would be to just put a program in place, a reasonable program in place, that's uniformly applied.

Mr. GUNDERSON. I think this is one of the first times I've seen where the cheese makers and MIF seem to be in a bit of disagreement here. Am I correct on this?

Mr. SARTORI. Maybe I could just amplify it. As I said earlier, our first position is to say we don't believe any—I'm speaking of National Cheese Institute—that we don't believe any legislation is necessary because we believe the various State laws are adequate at this time. But if there does need to be something, we would support the fund here, the reserve fund that we're talking about.

Now we're getting into this other area of various State-mandated laws. And I guess our preference, as I said, would be strictly to leave things as they are or switch over to the proposal that you've made here. I don't know that we're in opposition.

Mr. KOSMAN. I agree. I don't know that we're in direct opposition. We do have one difference. And that is we operate plants in eight States. So I look at how this is going to be applied in eight States.

Mr. Sartori I think has a plan in one State. And that State already has a bond in place. So he's accustomed to operating with that. I'm a little uneasy with it because of the number of States we operate in and because many of those States do not have any form of bond policy in effect right now.

Mr. GUNDERSON. How many of the States have any kind of State security program?

Mr. KOSMAN. To my recollection, two of them do: Michigan and Tennessee. But I could be wrong, quite honestly.

Mr. GUNDERSON. Sure.

Mr. KOSMAN. But that's what I believe, is Michigan and Tennessee.

Mr. GUNDERSON. Ms. Kaldor?

Ms. KALDOR. Based on our perspective, my understanding of what you had proposed would apply in the absence of a State program. And we really aren't in a position to take a position on that at this point. But I would defer to the other members of the panel.

Mr. GUNDERSON. Perhaps I need to invite you all to engage in the next few days in some discussion with your industry colleagues.

This may be as close as we can get to some kind of a consensus, some form of this. I would invite you to get back to me, to Mr. Dooley, to our staff on what you feel you can or cannot live with in this area.

Obviously, Mr. Yeager, if I can't figure out a way to get some consensus in the industry, I can't move this out of committee. You've heard my colleagues in the committee speak here this morning. You heard your colleagues in other parts of the dairy industry speak from your table this morning.

There's no secret since 1984 that I would like to do something. But in the political process, we have to have a consensus and a compromise in order to do that. So I'm committed to trying to achieve that. I don't know whether it is or is not doable.

Any final comments?

Mr. YEAGER. Well, the discussion here is the cost. The processors don't want to pay the banks that benefit more than anybody else. And you notice they're not here. Who benefits more than the bank industry? And they're not even here.

So you wouldn't look at a bank and say, "Well, you lend to processors. You benefit from the interest. You benefit from the loan to the farmer. You benefit everywhere. You pay nothing either." We wouldn't even consider asking the bank industry, "Well, here you prey on this, but you pay nothing."

So Mr. Barr, if I can understand his position, he's saying, "Well, I run this company. I've got to keep it vibrant. I see this cost to my company. Well, I can't do that."

And then here I thought this legislation, I thought this might happen. I thought you might really just do it. So I see that's not going to happen.

So I'm thinking, "Well, we're all broke. Then we can't let a person own what he labors for now." So I'm thinking, "Where's there some money that we could do this with?"

And I've looked through all the different companies. I understand how it works. I'm not trying to be offensive here, but if we took the combined amount of money that each of these companies, groups, if we took all the money alone in a year that they put into campaign finance and you add that total up, if you put us all together, let's say we didn't pay for campaigns for 2 years and we just took what we had paid out the year before, each of us, that would be a substantial amount of money that would at least begin a fund.

Maybe a few guys would have a couple of less yard signs. I don't know. But I'm just suggesting that there's a pile of money. That would work. So there's a way.

Mr. GUNDERSON. Mr. Dooley.

Mr. DOOLEY. Mr. Barr, maybe you might know and you might not. I know in California, Ms. Kaldor, we have about \$21 million?

Ms. KALDOR. Yes, we do.

Mr. DOOLEY. We have \$21 million already in a security fund.

Ms. KALDOR. Right.

Mr. DOOLEY. I also see that Massachusetts has a fund, New York has a fund, Ohio has a fund, and Vermont has a fund. There are five States that have funds. I think maybe even Texas, too. Yes, Texas also does.

Texas is a pretty large dairy State and New York. Do you know how much they have in their funds?

Mr. BARR. I did know in New York. I did not know in Texas. But I cannot answer that question. I know it's a revolving fund that they have to maintain a certain level. And then if there are any payouts out of the fund, there are assessments to bring it back to its original level.

But off the top of my head, I don't know what that number is. I could get it for you.

Mr. DOOLEY. When I look at this, when we're talking about a \$30 million national fund, already collectively among the various States, we probably have in excess of \$30 million in the five States that have the security funds that are in place?

Mr. BARR. I believe that's correct, yes.

Mr. DOOLEY. I guess I get back to this issue on if you're trying to move forward—and I appreciate Mr. Gunderson's approach to this, and I think this is an issue which on occasion every side has a valid argument almost, but, again, on who pays for what benefit here.

You know, \$30 million when you look at the dairy industry in its totality is not something that is difficult to generate. We now have producer check-offs for promotion. What is that generating just in 1 year, Mr. Barr?

Mr. BARR. About roughly \$200 million.

Mr. DOOLEY. So we have a producer check-off in terms of promotion which is generating \$200 million.

Mr. Yeager, I'd ask you. I mean, you were a dairy farmer out there. You were paying part of this \$200 million for promotion. I mean, from a producer standpoint, what would you think about contributing to a one-time fund, that has to carry \$30 million?

I mean, in terms of a producer making a check-off, what would be a higher value to you: contributing to the security fund or contributing to the promotion fund?

Mr. YEAGER. So what you're saying is that you—

Mr. DOOLEY. What I'm saying is I'm not absolutely convinced. And my producers aren't going to like this. I'm not absolutely convinced. If you really want to provide for income protection for producers out there, I'm not convinced that the processors are the people to go after.

And I think that also it contributes to some of the complications of generating a producer security fund. I'm thinking maybe it's simpler if we just said to all producers across the country out here that if you want an income protection plan, perhaps you ought to pay for it and that you ought to make a little bit of contribution for each hundredweight of milk that you put out there.

Mr. YEAGER. I don't know. I don't think so. I mean, I see what you're saying, but then you're telling the guy—I mean, do you do that to a person who goes to work in a factory, tell them well, hey, your employer might not pay you. So you've got to pay him to make sure that he pays you? That's ridiculous.

Mr. DOOLEY. Well, if you're a dairy farmer and I'm selling hay to you—and I am a farmer, and I do sell hay.

Mr. YEAGER. Don't do it in Washington because you'll be out of business real quick.

Mr. DOOLEY. Well, hold it, though.

Mr. YEAGER. There are no farmers left there to sell to. You see, I put up hay, too.

Mr. DOOLEY. What I'm saying, just put yourself in a position of being a dairy farmer that people are selling hay to. Now, you might have been in good financial shape. Yet, a dairy farmer down the road might default and not pay me for the hay I sold him.

As that dairy farmer that was maintaining his financial viability, should you be making a contribution to create a fund of money that would make me whole as a hay producer himself? Is that right?

Mr. YEAGER. Well, I sense what your argument is going to, but I don't think that's what we're dealing with here. I mean, I don't see the comparison, to be honest with you. And I say that respectfully. I'm no expert here.

But when I sell hay to somebody like yourself, that's pretty simple. Generally it's a cash deal. It's a cash sale. Well, that's really what milk sales are, too. It's cash. That's what the producer is led to believe, anyway. So if you sell, you expect to be paid.

Well, I wouldn't go carelessly down the road and deliver 20 tons of hay to somebody whom I don't really know, whom I don't know his financial situation or he doesn't pay me on the porch, so to speak. So no, I wouldn't do that. If that's what we're getting to, no. You have to be careful where you go.

And Mr. Barr says, "Well, he's a co-op" apparently. So the farmer should know that the co-op is safe. Well, I think I read it's like a \$20 billion co-op. I mean, how many farmers are expected to understand regional bank lending and \$20 billion operations while they shift their milk under a Federal law that makes them wait 45 days?

And that's what's forgotten here. These people are forced by this body to wait 45 days to be paid. How many people do that? What else can I say to you?

You tell them, you dictate to the farmer, he's got to wait. He doesn't have a choice. There's no choice. There's no option. Sometimes one co-op for a whole State, like where I come from, that's the way it is.

I didn't create that. The farmer down by the creek, he didn't create that. You're the one that tells—

Mr. DOOLEY. I would just point out, Mr. Yeager, that we just went through another dairy forum and that the producers were very much involved. A lot of the dairy pricing situation you have in place was a result of a lot of producer input. That doesn't mean that the system was good.

There were some folks, including Mr. Gunderson at one time, who advocated the complete deregulation, which would have allowed you, I guess, to go out on a cash basis, where you could have sold your milk and expected to be paid immediately. But I would say this, that there was almost universal opposition from the producer side to moving in that direction.

Mr. Sartori, on this bonding issue, which I find somewhat intriguing, you do have a statement in your written testimony where you say mandatory bonding laws can be extremely costly, penalizing all firms, regardless of their financial status.



You're currently a firm in Wisconsin which is working under a bonding system. What happens, though, on your comment, regardless of their financial status, if you're out purchasing a bond? Isn't the person that's selling that bond going to also make a determination on the risk of the particular institution, whether it's your company or someone else, in terms of how they price that in that if you incorporated a system which did have some audit provisions, obviously, in a way to protect proprietary information, would not the bonding cost reflect the financial condition of those individual firms?

Mr. SARTORI. Yes. As you said, we have the option in Wisconsin to bond or not bond. And we have exercised the option to bond. One of the choices as a family, privately held firm, we have not disclosed financial information for 55 years. And that required us to do that, and we chose not to do that.

As far as how the bonding firm makes the determination of the price of that, yes, they have to make an assessment of what that should cost. I'm not totally familiar with how that process goes on. I'm not personally involved in that. But it's an expense to us, and it's one that we have to do in the State of Wisconsin if we've chosen not to release financial information.

Mr. DOOLEY. And, Mr. Kosman, if you can just elaborate on that or provide a response to that?

Mr. KOSMAN. Well, yes, that's exactly right. In our case we are a publicly held company. So our finances are public information. And, depending on the structure of your finances, that bond is going to cost you different amounts of money.

The bonding idea, I'm not opposed to the bonding idea. I am looking for something, as I say, that's more uniformly applicable, something that's more uniformly managed, something that may provide—and I go back to the State of Michigan and the problem they had there, where it wasn't enforced, going back to say if something has to be done, then I believe, as I said in testimony, that there it should be treated uniformly across the board on everyone that processes milk.

Mr. GUNDERSON. If I can follow up, how would you respond? Because I'm obviously just searching for a solution here, how would you respond if we defined the terms of that bond and it were administered by the Federal market administrator so that there would be uniformity in bonding for those plants not covered in States with security programs in effect so that there would be a consistency, we would recognize the flexibility and the right of any State to take control of the destiny as the manufacturing industry in that State so chose, and, yet, there would be some security for the Mr. Yeagers of the world?

Mr. KOSMAN. As I say, what you would be looking at would be picking out those States that don't have something currently in place that you believe is adequate protection.

Again, being a company that operates plants in eight different States, I see that as cumbersome. I see that as cumbersome to us. I see that as something, again, that may not be easily tracked.

To require States to do things probably is going to take individual States different lengths of time to do it. Every State is going to have to sit there and hassle over how it may be done.

I personally don't see that in our situation as being something that is something that we would like to see happen.

Mr. GUNDERSON. Go ahead.

Mr. DOOLEY. Ms. Kaldor, in California we have, as I see, a bond in place.

Ms. KALDOR. Yes.

Mr. DOOLEY. And we also have a producer security fund.

Ms. KALDOR. Yes.

Mr. DOOLEY. Now, apparently California made the determination that the bond was not adequate by itself?

Ms. KALDOR. The bond is issued on a sliding scale or required on a sliding scale. It ranges from \$5,000 for a plant depending on its amount of production up to a maximum of \$20,000 with multiple plant companies being required to post bonds equal to \$20,000 per plant.

Mr. DOOLEY. So it's not a function, then, of the amount of milk purchased?

Ms. KALDOR. Precisely. And those bond requirements, as I understand it, were in effect prior to the Knudsen default. They were kept in place, along with the fund being built under the provisions of the Producer Security Act.

Mr. DOOLEY. Mr. Sartori, not being in your field, in Wisconsin, is it a function of milk purchased or is it similar to what we have in California, which is actually not going to provide a whole lot of protection to Mr. Yeager certainly?

Mr. SARTORI. I'm sorry. I'm not sure I understand the question.

Mr. DOOLEY. What Ms. Kaldor was saying was that we have a bond which is basically per facility a maximum maybe of \$20,000.

Ms. KALDOR. Right.

Mr. DOOLEY. Well, \$20,000 is pocket change if they're purchasing a whole lot of milk. It isn't going to provide any real protection to Mr. Yeager.

I was just curious if you were aware in Wisconsin, which has a bond in place. Is it a function of the amount of milk purchased that would provide a bonding for 30 days of milk or whatever receipts might be?

Mr. SARTORI. I believe it is 31 days of milk. I believe it is.

Mr. DOOLEY. So it's a much different situation?

Mr. SARTORI. Yes. And, of course, there's other options beyond bonding. I listed some of those. There's letters of credit and other financial measures that provide security.

If I could, I just want to add I don't believe we are in disagreement with the Milk Industry Foundation. Our first preference is, as I said, leave things as is.

Second, if there must be a Federal program, let's do it uniformly and preempt the existing State laws and make sure everyone participates, et cetera.

This third option of mandating a Federal law that forces the States is something I think we need to talk about and come to some consensus. That's something that just cropped up here today.

Mr. GUNDERSON. I think Mr. Dooley may have had the best suggestion about half an hour ago when he indicated that there was \$21 million in the reserve fund in California. Mr. Kosman indicated we only need \$15 million of that at the Federal level. We'll leave

\$6 million with California, and we will have solved everybody's problem.

I want to thank you all for being here. I want to thank you for your patience in a rather extended dialogue with Mr. Dooley and me. I hope you all understand that we are trying to find a way to solve the problem in a way that is, frankly, acceptable to all parties.

I don't know, Mr. Yeager, whether we can or cannot get there. I will only indicate to you evidence since my legislation in 1984 that I have a 12-year concern for this issue and will do everything I can over the next few days and weeks to see if we can arrive at a consensus.

I plead with the rest of you. Will you consider what we have talked about here and get to us, "Yes" or "No," so we know what you can or cannot live with in that regard?

Mr. YEAGER. Mr. Gunderson?

Mr. GUNDERSON. Yes?

Mr. YEAGER. See, I don't have a way to let them know, the farmers in Washington. I've got no way to let them know that a hearing was held or that the issue of their loss was discussed at all.

And I was wondering if this committee or there was some way that they could be notified. I mean, I could provide you with a list of their names. Maybe someone could mail them a letter.

Mr. GUNDERSON. Let me suggest two things. I understand you are here until Saturday. I will ask the committee press people to see whether or not we can get you in contact with some of the agricultural press in the Northwest. I think you'd be a great interview, frankly.

Mr. YEAGER. Well, I've done that. They wouldn't write. I've done that for 6 years. They would not write. So the press isn't going to tell them, I mean.

Mr. GUNDERSON. Well, let's see if we can't be helpful in that account.

Second, I have to check with the committee authorities as to our ability to initiate a targeted mailing to these people. If we can do it, I will certainly encourage it. My guess is if that cannot be done through public funds, that there are enough people in this room that are sensitive to your concerns that we will find a way to get a communication to them for you.

Mr. YEAGER. Thank you.

Mr. GUNDERSON. The Chair would ask unanimous consent to allow the record of today's hearing to remain open for 10 days to receive additional material. And supplementary written responses from witnesses to these questions. Without objection, that is so ordered.

The hearing of this subcommittee is now adjourned.

[Whereupon, at 11:57 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

104TH CONGRESS  
2D SESSION

# H. R. 3762

To assure payment to dairy and livestock producers for milk and livestock delivered to milk processors, livestock dealers, or market agencies.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 9, 1996

Mr. GUNDERSON (for himself, Mr. ROBERTS, Mr. JOHNSON of South Dakota, and Mr. THORNTON) introduced the following bill; which was referred to the Committee on Agriculture

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## A BILL

To assure payment to dairy and livestock producers for milk and livestock delivered to milk processors, livestock dealers, or market agencies.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Dairy and Livestock Producer Protection Act of 1996”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

### **TITLE I—DAIRY INDUSTRY SECURITY RESERVE FUND**

Sec. 101. Definitions.

- Sec. 102. Establishment of Dairy Industry Security Reserve Fund.  
 Sec. 103. Establishment of Board of Trustees for Dairy Industry Security Reserve Fund.  
 Sec. 104. Collection of assessments from milk handlers to fund Reserve Fund.  
 Sec. 105. Submission and payment of claims of milk producers for nonpayment for milk shipments.  
 Sec. 106. Preemption of State or local payment security programs.

**TITLE II—STATUTORY TRUST FOR LIVESTOCK SELLERS**

- Sec. 201. Establishment of statutory trust for benefit of sellers of livestock to dealers and market agencies.

1           **TITLE I—DAIRY INDUSTRY**  
 2           **SECURITY RESERVE FUND**

3           **SEC. 101. DEFINITIONS.**

4           For purposes of this title:

5           (1) **BOARD.**—The term “Board” means the  
 6           Board of Trustees established under section 103 to  
 7           administer the Dairy Industry Security Reserve  
 8           Fund.

9           (2) **MILK.**—The term “milk” means cow’s milk  
 10          produced in the 48 contiguous States.

11          (3) **MILK HANDLER.**—The term “milk handler”  
 12          means a person who receives or otherwise acquires  
 13          milk in commerce before processing or who first  
 14          processes milk for the purpose of marketing com-  
 15          mercially milk or milk products.

16          (4) **MILK PRODUCER.**—The term “milk pro-  
 17          ducer” means a person who produces milk in the 48  
 18          contiguous States and markets such milk for com-  
 19          mercial use.



## 4

1 Fund on behalf of milk handlers subject to assess-  
2 ments.

3 (3) Amounts borrowed by the Board.

4 (4) Interest from investments made under sub-  
5 section (d).

6 (c) USE OF RESERVE FUND.—The Board may use  
7 monies in the Reserve Fund to pay—

8 (1) subject to section 103(f), the expenses in-  
9 curred by the Secretary or the Board in administer-  
10 ing this title; and

11 (2) the claims of milk producers for milk  
12 shipped by the producers for which payment is not  
13 made on account of the bankruptcy under title 11,  
14 United States Code, of a milk handler.

15 (d) INVESTMENT AUTHORITY.—The Board may in-  
16 vest monies in the Reserve Fund in general obligations  
17 of the United States, in general obligations of a State or  
18 political subdivision of a State, in any interest bearing ac-  
19 count or certificate of deposit of a bank that is a member  
20 of the Federal Reserve System, or in obligations fully  
21 guaranteed as to principle and interest by the United  
22 States. The Secretary shall provide guidelines to the  
23 Board for the exercise of this investment authority.

24 (e) BORROWING AUTHORITY.—The Board may bor-  
25 row money for deposit into the Reserve Fund if the Board

5

1 determines that amounts in the Reserve Fund are insuffi-  
2 cient to satisfy approved claims.

3 **SEC. 103. ESTABLISHMENT OF BOARD OF TRUSTEES FOR**  
4 **DAIRY INDUSTRY SECURITY RESERVE FUND.**

5 (a) **ESTABLISHMENT.**—There is hereby established a  
6 Board of Trustees to administer the Dairy Industry Secu-  
7 rity Reserve Fund, set and collect assessments under sec-  
8 tion 104 to provide funds for the Reserve Fund, pay  
9 claims made against the Reserve Fund, and perform such  
10 other duties as may be assigned to the Board by this title  
11 or the Secretary.

12 (b) **MEMBERSHIP.**—

13 (1) **APPOINTMENT OF MEMBERS.**—The Board  
14 shall consist of nine members appointed by the Sec-  
15 retary as follows:

16 (A) One member selected from among milk  
17 producers whose farms are located in Region I.

18 (B) One member selected from among milk  
19 producers whose farms are located in Region II.

20 (C) One member selected from among milk  
21 producers whose farms are located in Region  
22 III.

23 (D) One member selected from among the  
24 officers or employees of milk handlers that are  
25 subject to the assessment under section 104



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1 and the principal place of business of which is  
2 Region I.

3 (E) One member selected from among the  
4 officers or employees of milk handlers that are  
5 subject to the assessment under section 104  
6 and the principal place of business of which is  
7 Region II.

8 (F) One member selected from among the  
9 officers or employees of milk handlers that are  
10 subject to the assessment under section 104  
11 and the principal place of business of which is  
12 Region III.

13 (G) Three members selected from among  
14 persons who are experts in financial investment  
15 or the staffing or administration of relevant  
16 Federal programs, as designated by the Sec-  
17 retary before the first solicitation of nominees  
18 under subsection (c).

19 (2) REGIONAL DISTRIBUTION.—For purposes of  
20 making regional appointments of members of the  
21 Board under paragraph (1), the 48 contiguous  
22 States shall be grouped into three regions as follows:

23 (A) Region I: Alabama, Arkansas, Con-  
24 necticut, Delaware, Florida, Georgia, Indiana,  
25 Kentucky, Louisiana, Maine, Maryland, Massa-

1 chusetts, Mississippi, New Hampshire, New  
2 Jersey, New York, North Carolina, Ohio, Penn-  
3 sylvania, Rhode Island, South Carolina, Ten-  
4 nessee, Texas, Vermont, Virginia, and West  
5 Virginia.

6 (B) Region II: Illinois, Iowa, Michigan,  
7 Minnesota, Missouri, North Dakota, South Da-  
8 kota, and Wisconsin.

9 (C) Region III: Arizona, California, Colo-  
10 rado, Idaho, Kansas, Montana, Nebraska, Ne-  
11 vada, New Mexico, Oklahoma, Oregon, Utah,  
12 Washington, and Wyoming.

13 (3) TERMS OF MEMBERS; VACANCIES.—Each  
14 member of the Board shall serve for a three-year  
15 term, except that the Secretary may stagger the  
16 terms of the initial members of the Board. A va-  
17 cancy on the Board shall be filled in the manner in  
18 which the original appointment is required to be  
19 made.

20 (4) COMPENSATION.—Members of the Board  
21 shall serve without pay, but shall receive a per diem  
22 for each day during which they are engaged in the  
23 actual performance of services on behalf of the  
24 Board and shall be reimbursed for expenses incurred  
25 in their service on the Board, including reasonable

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1 travel costs and out-of-pocket expenses when re-  
2 quired to be away from their home or place of busi-  
3 ness in the service of the Board.

4 (5) REMOVAL FOR CAUSE.—The Secretary may  
5 remove any member of the Board for good cause  
6 shown.

7 (c) NOMINATION PROCESS.—

8 (1) APPOINTMENT FROM NOMINEES.—The Sec-  
9 retary shall appoint the members specified under  
10 subsection (b)(1) from nominees submitted pursuant  
11 to paragraph (2).

12 (2) SOLICITATION OF NOMINEES.—The Sec-  
13 retary shall begin the process of filling a particular  
14 position on the Board by soliciting the names of per-  
15 sons who are qualified to serve as a member of the  
16 Board in that position. The Secretary shall accept  
17 recommendations from persons who are qualified to  
18 serve as a member of the Board in that position or  
19 from organizations composed of such persons. The  
20 Secretary shall be the final judge of the qualifica-  
21 tions of persons to submit recommendations or to  
22 serve on the Board.

23 (3) LACK OF NOMINEES.—If nominees are not  
24 submitted pursuant to paragraph (2) for a particu-  
25 lar position on the Board, the Secretary may make

1 the appointment in such other manner as the Sec-  
2 retary may prescribe.

3 (d) BOARD PROCEDURES.—

4 (1) MEETINGS OF THE BOARD.—Within two  
5 months after the Secretary has appointed the initial  
6 Board, the Board shall convene for its initial meet-  
7 ing and elect officers and adopt written bylaws and  
8 rules of procedure to govern its meetings. Following  
9 the initial meeting, the Board shall meet at the call  
10 of the chairperson or as requested by the Secretary,  
11 but at least once every six months.

12 (2) QUORUM.—A quorum of the Board shall be  
13 five members.

14 (3) NOTICE TO SECRETARY; EX OFFICIO REP-  
15 RESENTATION.—The Board shall notify the Sec-  
16 retary in advance of each meeting of the Board. The  
17 Secretary, or a representative of the Secretary, may  
18 attend each meeting as a nonvoting ex officio mem-  
19 ber of the Board.

20 (4) CHAIRPERSON.—The members of the Board  
21 shall select one of the members to serve as the chair-  
22 person of the Board. The chairperson shall serve a  
23 one year term of office.

24 (e) STAFF.—The Board may employ or contract with  
25 outside entities for such persons as the Board considers

10

1 to be necessary to assist the Board to perform its duties  
2 under this title. The Board shall define the duties of such  
3 persons in service to the Board and fix the compensation  
4 of such persons. At the request of the Board, the Sec-  
5 retary may assign, on a reimbursable basis, employees of  
6 the Department of Agriculture to assist the Board.

7 (f) ADMINISTRATIVE EXPENSES.—

8 (1) IN GENERAL.—The Board may incur and  
9 pay for administrative and other expenses related to  
10 the duties of the Board under this title.

11 (2) LIMITATION.—Expenses incurred or paid by  
12 the Board during a fiscal year may not exceed two  
13 percent of the total amount in the Reserve Fund at  
14 the beginning of that fiscal year. The Secretary may  
15 waive this limitation for fiscal years before the Re-  
16 serve Fund reaches the maximum capital contribu-  
17 tion level specified in section 104.

18 (3) REIMBURSEMENT OF GOVERNMENT  
19 COSTS.—As one of the administrative expenses of  
20 the Board, the Board shall reimburse the Secretary  
21 for all costs incurred by the Secretary—

22 (A) to assist the Board in administering  
23 the Reserve Fund or in carrying out this title;  
24 and

1 (B) in performing oversight of Board ac-  
2 tivities.

3 (g) GENERAL POWERS OF THE BOARD.—

4 (1) BYLAWS AND RULES.—The Board may  
5 adopt bylaws and issue rules and regulations govern-  
6 ing the manner in which its business may be con-  
7 ducted and the powers vested in it may be exercised.

8 (2) SUITS.—The Board may sue and be sued,  
9 complain and defend, in any court of law or equity,  
10 State or Federal. All suits of a civil nature at com-  
11 mon law or in equity to which the Board shall be a  
12 party shall be deemed to arise under the laws of the  
13 United States, and the United States district courts  
14 shall have original jurisdiction thereof, without re-  
15 gard to the amount in controversy, and the Board,  
16 in any capacity, without bond or security, may re-  
17 move any such action, suit, or proceeding from a  
18 State court to the United States district court for  
19 the district or division embracing the place where  
20 the same is pending by following any procedure for  
21 removal then in effect.

22 (3) INTERVENTION.—Upon timely application,  
23 the Board may raise and may appear and be heard  
24 on any issue in a bankruptcy case under title 11,

12

1 United States Code, in which a milk handler is the  
2 debtor.

3 (4) CONTRACT AUTHORITY.—The Board may  
4 enter into contracts and agreements as necessary in  
5 the conduct of its activities under this title.

6 (5) MISCELLANEOUS AUTHORITIES.—The  
7 Board may exercise such other powers incidental to  
8 its performance of functions required or authorized  
9 for it under this title.

10 (h) REPORTS.—The Board shall submit an annual  
11 report to the Secretary and Congress describing the activi-  
12 ties of the Board during the preceding fiscal year, expendi-  
13 tures from the Reserve Fund during that fiscal year, and  
14 the balance of the Reserve Fund at the end of that fiscal  
15 year and containing an estimate of anticipated expendi-  
16 tures from the Reserve Fund during the fiscal year in  
17 which the report is submitted.

18 **SEC. 104. COLLECTION OF ASSESSMENTS FROM MILK HAN-**  
19 **DLERS TO FUND RESERVE FUND.**

20 (a) IMPOSITION OF ASSESSMENT.—The Secretary  
21 shall require by order that each milk handler shall pay  
22 an assessment on all milk acquired by the milk handler  
23 and marketed for commercial use. In lieu of collecting an  
24 assessment from milk handlers in a State, the Board may  
25 accept payments from the State that—

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1           (5) **PROCESS.**—The term “process” includes  
2           the pasteurization, clarification, or separation of  
3           milk or the addition of other ingredients or products  
4           to milk, except that such term does not include sim-  
5           ply the cooling of milk or the commingling of milk  
6           with other milk.

7           (6) **RESERVE FUND.**—The term “Reserve  
8           Fund” means the Dairy Industry Security Reserve  
9           Fund established under section 102.

10          (7) **SECRETARY.**—The term “Secretary” means  
11          the Secretary of Agriculture.

12 **SEC. 102. ESTABLISHMENT OF DAIRY INDUSTRY SECURITY**  
13 **RESERVE FUND.**

14          (a) **ESTABLISHMENT.**—There is hereby established in  
15          the Department of Agriculture a fund to be known as the  
16          “Dairy Industry Security Reserve Fund”. Monies in the  
17          Reserve Fund shall be available only for the use of the  
18          Board.

19          (b) **CONTENTS OF RESERVE FUND.**—The Reserve  
20          Fund shall consist of the following:

21               (1) Amounts collected as assessments under  
22               section 104.

23               (2) Amounts collected by States before the date  
24               of the enactment of this Act and paid to the Reserve



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1 Fund on behalf of milk handlers subject to assess-  
2 ments.

3 (3) Amounts borrowed by the Board.

4 (4) Interest from investments made under sub-  
5 section (d).

6 (c) USE OF RESERVE FUND.—The Board may use  
7 monies in the Reserve Fund to pay—

8 (1) subject to section 103(f), the expenses in-  
9 curred by the Secretary or the Board in administer-  
10 ing this title; and

11 (2) the claims of milk producers for milk  
12 shipped by the producers for which payment is not  
13 made on account of the bankruptcy under title 11,  
14 United States Code, of a milk handler.

15 (d) INVESTMENT AUTHORITY.—The Board may in-  
16 vest monies in the Reserve Fund in general obligations  
17 of the United States, in general obligations of a State or  
18 political subdivision of a State, in any interest bearing ac-  
19 count or certificate of deposit of a bank that is a member  
20 of the Federal Reserve System, or in obligations fully  
21 guaranteed as to principle and interest by the United  
22 States. The Secretary shall provide guidelines to the  
23 Board for the exercise of this investment authority.

24 (e) BORROWING AUTHORITY.—The Board may bor-  
25 row money for deposit into the Reserve Fund if the Board

1 determines that amounts in the Reserve Fund are insuffi-  
 2 cient to satisfy approved claims.

3 **SEC. 103. ESTABLISHMENT OF BOARD OF TRUSTEES FOR**  
 4 **DAIRY INDUSTRY SECURITY RESERVE FUND.**

5 (a) **ESTABLISHMENT.**—There is hereby established a  
 6 Board of Trustees to administer the Dairy Industry Secu-  
 7 rity Reserve Fund, set and collect assessments under sec-  
 8 tion 104 to provide funds for the Reserve Fund, pay  
 9 claims made against the Reserve Fund, and perform such  
 10 other duties as may be assigned to the Board by this title  
 11 or the Secretary.

12 (b) **MEMBERSHIP.**—

13 (1) **APPOINTMENT OF MEMBERS.**—The Board  
 14 shall consist of nine members appointed by the Sec-  
 15 retary as follows:

16 (A) One member selected from among milk  
 17 producers whose farms are located in Region I.

18 (B) One member selected from among milk  
 19 producers whose farms are located in Region II.

20 (C) One member selected from among milk  
 21 producers whose farms are located in Region  
 22 III.

23 (D) One member selected from among the  
 24 officers or employees of milk handlers that are  
 25 subject to the assessment under section 104

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and the principal place of business of which is Region I.

(E) One member selected from among the officers or employees of milk handlers that are subject to the assessment under section 104 and the principal place of business of which is Region II.

(F) One member selected from among the officers or employees of milk handlers that are subject to the assessment under section 104 and the principal place of business of which is Region III.

(G) Three members selected from among persons who are experts in financial investment or the staffing or administration of relevant Federal programs, as designated by the Secretary before the first solicitation of nominees under subsection (c).

(2) REGIONAL DISTRIBUTION.—For purposes of making regional appointments of members of the Board under paragraph (1), the 48 contiguous States shall be grouped into three regions as follows:

(A) Region I: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Indiana, Kentucky, Louisiana, Maine, Maryland, Massa-

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1 chusetts, Mississippi, New Hampshire, New  
2 Jersey, New York, North Carolina, Ohio, Penn-  
3 sylvania, Rhode Island, South Carolina, Ten-  
4 nessee, Texas, Vermont, Virginia, and West  
5 Virginia.

6 (B) Region II: Illinois, Iowa, Michigan,  
7 Minnesota, Missouri, North Dakota, South Da-  
8 kota, and Wisconsin.

9 (C) Region III: Arizona, California, Colo-  
10 rado, Idaho, Kansas, Montana, Nebraska, Ne-  
11 vada, New Mexico, Oklahoma, Oregon, Utah,  
12 Washington, and Wyoming.

13 (3) TERMS OF MEMBERS; VACANCIES.—Each  
14 member of the Board shall serve for a three-year  
15 term, except that the Secretary may stagger the  
16 terms of the initial members of the Board. A va-  
17 cancy on the Board shall be filled in the manner in  
18 which the original appointment is required to be  
19 made.

20 (4) COMPENSATION.—Members of the Board  
21 shall serve without pay, but shall receive a per diem  
22 for each day during which they are engaged in the  
23 actual performance of services on behalf of the  
24 Board and shall be reimbursed for expenses incurred  
25 in their service on the Board, including reasonable

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1 travel costs and out-of-pocket expenses when re-  
2 quired to be away from their home or place of busi-  
3 ness in the service of the Board.

4 (5) REMOVAL FOR CAUSE.—The Secretary may  
5 remove any member of the Board for good cause  
6 shown.

7 (c) NOMINATION PROCESS.—

8 (1) APPOINTMENT FROM NOMINEES.—The Sec-  
9 retary shall appoint the members specified under  
10 subsection (b)(1) from nominees submitted pursuant  
11 to paragraph (2).

12 (2) SOLICITATION OF NOMINEES.—The Sec-  
13 retary shall begin the process of filling a particular  
14 position on the Board by soliciting the names of per-  
15 sons who are qualified to serve as a member of the  
16 Board in that position. The Secretary shall accept  
17 recommendations from persons who are qualified to  
18 serve as a member of the Board in that position or  
19 from organizations composed of such persons. The  
20 Secretary shall be the final judge of the qualifica-  
21 tions of persons to submit recommendations or to  
22 serve on the Board.

23 (3) LACK OF NOMINEES.—If nominees are not  
24 submitted pursuant to paragraph (2) for a particu-  
25 lar position on the Board, the Secretary may make

1 the appointment in such other manner as the Sec-  
2 retary may prescribe.

3 (d) BOARD PROCEDURES.—

4 (1) MEETINGS OF THE BOARD.—Within two  
5 months after the Secretary has appointed the initial  
6 Board, the Board shall convene for its initial meet-  
7 ing and elect officers and adopt written bylaws and  
8 rules of procedure to govern its meetings. Following  
9 the initial meeting, the Board shall meet at the call  
10 of the chairperson or as requested by the Secretary,  
11 but at least once every six months.

12 (2) QUORUM.—A quorum of the Board shall be  
13 five members.

14 (3) NOTICE TO SECRETARY; EX OFFICIO REP-  
15 RESENTATION.—The Board shall notify the Sec-  
16 retary in advance of each meeting of the Board. The  
17 Secretary, or a representative of the Secretary, may  
18 attend each meeting as a nonvoting ex officio mem-  
19 ber of the Board.

20 (4) CHAIRPERSON.—The members of the Board  
21 shall select one of the members to serve as the chair-  
22 person of the Board. The chairperson shall serve a  
23 one year term of office.

24 (e) STAFF.—The Board may employ or contract with  
25 outside entities for such persons as the Board considers

10

1 to be necessary to assist the Board to perform its duties  
2 under this title. The Board shall define the duties of such  
3 persons in service to the Board and fix the compensation  
4 of such persons. At the request of the Board, the Sec-  
5 retary may assign, on a reimbursable basis, employees of  
6 the Department of Agriculture to assist the Board.

7 (f) ADMINISTRATIVE EXPENSES.—

8 (1) IN GENERAL.—The Board may incur and  
9 pay for administrative and other expenses related to  
10 the duties of the Board under this title.

11 (2) LIMITATION.—Expenses incurred or paid by  
12 the Board during a fiscal year may not exceed two  
13 percent of the total amount in the Reserve Fund at  
14 the beginning of that fiscal year. The Secretary may  
15 waive this limitation for fiscal years before the Re-  
16 serve Fund reaches the maximum capital contribu-  
17 tion level specified in section 104.

18 (3) REIMBURSEMENT OF GOVERNMENT  
19 COSTS.—As one of the administrative expenses of  
20 the Board, the Board shall reimburse the Secretary  
21 for all costs incurred by the Secretary—

22 (A) to assist the Board in administering  
23 the Reserve Fund or in carrying out this title;  
24 and

## 11

1 (B) in performing oversight of Board ac-  
2 tivities.

3 (g) GENERAL POWERS OF THE BOARD.—

4 (1) BYLAWS AND RULES.—The Board may  
5 adopt bylaws and issue rules and regulations govern-  
6 ing the manner in which its business may be con-  
7 ducted and the powers vested in it may be exercised.

8 (2) SUITS.—The Board may sue and be sued,  
9 complain and defend, in any court of law or equity,  
10 State or Federal. All suits of a civil nature at com-  
11 mon law or in equity to which the Board shall be a  
12 party shall be deemed to arise under the laws of the  
13 United States, and the United States district courts  
14 shall have original jurisdiction thereof, without re-  
15 gard to the amount in controversy, and the Board,  
16 in any capacity, without bond or security, may re-  
17 move any such action, suit, or proceeding from a  
18 State court to the United States district court for  
19 the district or division embracing the place where  
20 the same is pending by following any procedure for  
21 removal then in effect.

22 (3) INTERVENTION.—Upon timely application,  
23 the Board may raise and may appear and be heard  
24 on any issue in a bankruptcy case under title 11,



12

1 United States Code, in which a milk handler is the  
2 debtor.

3 (4) **CONTRACT AUTHORITY.**—The Board may  
4 enter into contracts and agreements as necessary in  
5 the conduct of its activities under this title.

6 (5) **MISCELLANEOUS AUTHORITIES.**—The  
7 Board may exercise such other powers incidental to  
8 its performance of functions required or authorized  
9 for it under this title.

10 (h) **REPORTS.**—The Board shall submit an annual  
11 report to the Secretary and Congress describing the activi-  
12 ties of the Board during the preceding fiscal year, expendi-  
13 tures from the Reserve Fund during that fiscal year, and  
14 the balance of the Reserve Fund at the end of that fiscal  
15 year and containing an estimate of anticipated expendi-  
16 tures from the Reserve Fund during the fiscal year in  
17 which the report is submitted.

18 **SEC. 104. COLLECTION OF ASSESSMENTS FROM MILK HAN-**  
19 **DLERS TO FUND RESERVE FUND.**

20 (a) **IMPOSITION OF ASSESSMENT.**—The Secretary  
21 shall require by order that each milk handler shall pay  
22 an assessment on all milk acquired by the milk handler  
23 and marketed for commercial use. In lieu of collecting an  
24 assessment from milk handlers in a State, the Board may  
25 accept payments from the State that—

13

1 (1) were collected before the date of the enact-  
2 ment of this title; and

3 (2) are paid on behalf of milk handlers in  
4 amounts sufficient to cover the amounts that would  
5 be otherwise due from the milk handlers.

6 (b) EXCEPTIONS.—

7 (1) NONCOMMERCIAL PUBLIC HANDLERS.—The  
8 Board may exempt from paying an assessment those  
9 milk handlers that are noncommercial public users  
10 of milk, such as the Armed Forces, prisons, and  
11 schools.

12 (2) HANDLERS WHO ARE ALSO PRODUCERS.—  
13 A milk handler that is also a milk producer shall not  
14 be subject to an assessment if the milk handler only  
15 markets milk that is the handler's own production  
16 and such milk is produced through a single farming  
17 operation. In light of this exception, a milk handler  
18 that fails to pay an assessment may not submit a  
19 claim as a milk producer under section 105 for  
20 losses related to the handler's bankruptcy.

21 (c) AMOUNT OF ASSESSMENT.—The rate of assess-  
22 ment shall be established by the Board, except that the  
23 rate may not exceed two cents per hundredweight of milk.

24 (d) SUSPENSION OF ASSESSMENTS.—

1           (1) **SUSPENSION REQUIRED.**—The Board shall  
2 suspend the collection of assessments under this sec-  
3 tion whenever the unobligated balance in the Reserve  
4 Fund reaches \$30,000,000.

5           (2) **REFUND OF EXCESS ASSESSMENTS.**—If the  
6 unobligated balance in the Reserve Fund exceeds  
7 \$30,000,000 for three consecutive years, the Sec-  
8 retary shall refund the amount in excess of  
9 \$30,000,000 to all milk handlers that are in oper-  
10 ation as of the date the refund is declared and from  
11 which assessments were collected at any time.

12           (3) **AMOUNT OF REFUND.**—The amount to be  
13 paid as a refund to a milk handler referred to in  
14 paragraph (2) shall bear the same ratio to the total  
15 amount to be refunded as—

16                   (A) the total amount of assessments that  
17 would have been collected from that milk han-  
18 dler during the 12-month period preceding the  
19 refund, if not for the suspension of assessments  
20 under paragraph (1); bears

21                   (B) to the total amount of assessments  
22 that would have been so collected during that  
23 period from all milk handlers referred to in  
24 paragraph (2).

25           (e) **COLLECTION AND ENFORCEMENT.**—

1           (1) **COLLECTION.**—Assessments under this sec-  
2           tion shall be collected and remitted on a monthly  
3           basis to the Board for deposit in the Reserve Fund.  
4           The Secretary shall issue an order prescribing the  
5           manner in which assessments are to be collected and  
6           remitted. The Secretary shall oversee the collection  
7           of assessments using the audit system provided  
8           under Federal milk marketing orders issued under  
9           section 8c of the Agricultural Adjustment Act (7  
10          U.S.C. 608c), reenacted with amendments by the  
11          Agricultural Marketing Agreement Act of 1937.

12          (2) **PENALTIES.**—If a milk handler fails to  
13          remit the assessments required under this section or  
14          fails to comply with such requirements for record-  
15          keeping or otherwise as are required by the Board  
16          to carry out this section, the milk handler shall be  
17          liable to the Secretary for a civil penalty in an  
18          amount that is—

19                 (A) in the case of an unintentional viola-  
20                 tion, not less than \$500 but not more than  
21                 \$5,000; and

22                 (B) in the case of an intentional violation,  
23                 not less than \$10,000 but not more than  
24                 \$100,000.

1           (3) ENFORCEMENT.—The Secretary may en-  
2           force this section in the courts of the United States.

3           (f) NO EFFECT ON PRODUCER PRICES.—Assess-  
4           ments collected under this section shall not—

5           (1) reduce the prices paid under the Federal  
6           milk marketing orders issued under section 8c of the  
7           Agricultural Adjustment Act (7 U.S.C. 608c), reen-  
8           acted with amendments by the Agricultural Market-  
9           ing Agreement Act of 1937; or

10          (2) be deducted from the amounts that milk  
11          handlers must pay to milk producers for milk sold  
12          to a milk handler.

13 **SEC. 105. SUBMISSION AND PAYMENT OF CLAIMS OF MILK**  
14                           **PRODUCERS FOR NONPAYMENT FOR MILK**  
15                           **SHIPMENTS.**

16          (a) BOARD DETERMINATION OF ELIGIBILITY.—The  
17          Board shall determine the eligibility of a milk producer  
18          to receive a payment from the Reserve Fund on account  
19          of the bankruptcy under title 11, United States Code, of  
20          a milk handler.

21          (b) SUBMISSION OF CLAIM.—To apply for a payment  
22          from the Reserve Fund, a milk producer shall submit a  
23          claim to the Board in such form and containing such in-  
24          formation as the Board may require in order to evaluate

1 the claim. The information required by the Board shall  
2 include the following:

3 (1) The name of the milk handler the bank-  
4 ruptcy of which has resulted in the nonpayment to  
5 the milk producer for milk supplied by the milk pro-  
6 ducer.

7 (2) The name of the State in which the milk  
8 handler is licensed.

9 (3) The number of days of milk shipments for  
10 which the milk producer has not been paid on ac-  
11 count of the bankruptcy.

12 (4) The quantity of milk involved in those ship-  
13 ments.

14 (5) The amount of the payments due to the  
15 milk producer for those shipments that has not been  
16 paid.

17 (c) ELIGIBILITY CRITERIA.—Payments may be made  
18 by the Board on a claim submitted under this section only  
19 in the case of the bankruptcy of a milk handler that is  
20 licensed by a State and only with respect to milk produced  
21 by a milk producer after the date of the enactment of this  
22 title.

23 (d) AMOUNT OF PAYMENT.—The total amount paid  
24 by the Board under this section to a milk producer on  
25 an approved claim shall be equal to 80 percent of the total

1 amount due to the milk producer and not paid on account  
2 of the bankruptcy for shipments of milk by the milk pro-  
3 ducer occurring during the period—

4 (1) beginning on the date of the first shipment  
5 for which the milk producer is not paid; and

6 (2) ending 31 days after that date.

7 (e) **PARTIAL PAYMENTS.**—If monies in the Reserve  
8 Fund are insufficient to make payments under this section  
9 in a lump sum, the Board may pay approved claims on  
10 a pro rata basis while funds are generated through assess-  
11 ments under section 104 to permit payment of the total  
12 amount of the approved claims.

13 (f) **REIMBURSEMENT OF PAYMENT.**—If a milk pro-  
14 ducer receives a payment from the Reserve Fund and  
15 thereafter recovers any or all of the money owed by the  
16 bankrupt milk handler to that milk producer for the same  
17 milk, the milk producer shall reimburse the Reserve Fund  
18 in an amount equal to the amount recovered from the  
19 bankrupt milk handler (or the estate of the bankrupt milk  
20 handler) for the same milk, but not to exceed the amount  
21 the milk producer received from the Reserve Fund.

22 **SEC. 106. PREEMPTION OF STATE OR LOCAL PAYMENT SE-**  
23 **CURITY PROGRAMS.**

24 The provisions of this title preempt any State or local  
25 law, regulation, requirement, or order with respect to en-

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SELLERS



1 **"SEC. 318. STATUTORY TRUST ESTABLISHED: LIVESTOCK**  
2 **SELLERS.**

3 **"(a) DEFINITIONS.—In this section:**

4 **"(1) CASH SALE.—The term 'cash sale' means**  
5 **a sale in which the seller does not expressly extend**  
6 **credit to the buyer.**

7 **"(2) TRUST CORPUS.—The term 'trust corpus'**  
8 **means the following assets of a dealer or market**  
9 **agency subsequent to the purchase of livestock from**  
10 **a seller in a cash sale:**

11 **"(A) Accounts receivable and proceeds de-**  
12 **rived from any resulting sale of the livestock by**  
13 **the dealer or market agency.**

14 **"(B) The inventory of the dealer or market**  
15 **agency, except as provided in subsection (d) re-**  
16 **garding the rights of a bona fide third-party**  
17 **purchaser for value.**

18 **"(3) MARKET AGENCY.—The term 'market**  
19 **agency' means any person engaged in the business**  
20 **of buying in commerce livestock on a commission**  
21 **basis.**

22 **"(b) ESTABLISHMENT OF TRUST.—A dealer or mar-**  
23 **ket agency that purchases livestock in a cash sale shall**  
24 **hold the trust corpus in trust for the benefit of the unpaid**  
25 **seller of the livestock until such time as the seller receives**  
26 **payment in full for the livestock. A payment in a cash**

1 ensuring the payment of milk producers for milk sold to a  
2 milk handler in situations involving the bankruptcy of the  
3 milk handler, including State or local programs in the  
4 form of—

5 (1) a reserve fund funded by milk handlers to  
6 reimburse milk producers for losses incurred as a re-  
7 sult of the bankruptcy of a milk handler subject to  
8 this title;

9 (2) a statutory trust established for the benefit  
10 of milk producers;

11 (3) the creation of a priority in favor of for the  
12 benefit of a milk producer, without regard to the  
13 order of perfection; or

14 (4) any similar payment security requirements,  
15 including surety bonds, letters of credit, pledges of  
16 assets, and cash deposits.

17 **TITLE II—STATUTORY TRUST**  
18 **FOR LIVESTOCK SELLERS**

19 **SEC. 201. ESTABLISHMENT OF STATUTORY TRUST FOR**  
20 **BENEFIT OF SELLERS OF LIVESTOCK TO**  
21 **DEALERS AND MARKET AGENCIES.**

22 Title III of the Packers and Stockyards Act, 1921  
23 (7 U.S.C. 201 et seq.), is amended by adding at the end  
section:

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**"SEC. 318. STATUTORY TRUST ESTABLISHED: LIVESTOCK  
SELLERS.**

**"(a) DEFINITIONS.—**In this section:

**"(1) CASH SALE.—**The term 'cash sale' means a sale in which the seller does not expressly extend credit to the buyer.

**"(2) TRUST CORPUS.—**The term 'trust corpus' means the following assets of a dealer or market agency subsequent to the purchase of livestock from a seller in a cash sale:

**"(A) Accounts receivable and proceeds de-** rived from any resulting sale of the livestock by the dealer or market agency.

**"(B) The inventory of the dealer or market** agency, except as provided in subsection (d) regarding the rights of a bona fide third-party purchaser for value.

**"(3) MARKET AGENCY.—**The term 'market agency' means any person engaged in the business of buying in commerce livestock on a commission basis.

**"(b) ESTABLISHMENT OF TRUST.—**A dealer or market agency that purchases livestock in a cash sale shall hold the trust corpus in trust for the benefit of the unpaid seller of the livestock until such time as the seller receives payment in full for the livestock. A payment in a cash

19

1 suring the payment of milk producers for milk sold to a  
 2 milk handler in situations involving the bankruptcy of the  
 3 milk handler, including State or local programs in the  
 4 form of—

5 (1) a reserve fund funded by milk handlers to  
 6 reimburse milk producers for losses incurred as a re-  
 7 sult of the bankruptcy of a milk handler subject to  
 8 this title;

9 (2) a statutory trust established for the benefit  
 10 of milk producers;

11 (3) the creation of a priority in favor or for the  
 12 benefit of a milk producer, without regard to the  
 13 order of perfection; or

14 (4) any similar payment security requirements,  
 15 including surety bonds, letters of credit, pledges of  
 16 assets, and cash deposits.

## 17 **TITLE II—STATUTORY TRUST** 18 **FOR LIVESTOCK SELLERS**

### 19 **SEC. 201. ESTABLISHMENT OF STATUTORY TRUST FOR** 20 **BENEFIT OF SELLERS OF LIVESTOCK TO** 21 **DEALERS AND MARKET AGENCIES.**

22 Title III of the Packers and Stockyards Act, 1921  
 23 (7 U.S.C. 201 et seq.), is amended by adding at the end  
 24 the following new section:

**'SEC. 318. STATUTORY TRUST ESTABLISHED: LIVESTOCK  
SELLERS.**

**“(a) DEFINITIONS.—**In this section:

**“(1) CASH SALE.—**The term ‘cash sale’ means a sale in which the seller does not expressly extend credit to the buyer.

**“(2) TRUST CORPUS.—**The term ‘trust corpus’ means the following assets of a dealer or market agency subsequent to the purchase of livestock from a seller in a cash sale:

**“(A) Accounts receivable and proceeds de-** rived from any resulting sale of the livestock by the dealer or market agency.

**“(B) The inventory of the dealer or market** agency, except as provided in subsection (d) regarding the rights of a bona fide third-party purchaser for value.

**“(3) MARKET AGENCY.—**The term ‘market agency’ means any person engaged in the business of buying in commerce livestock on a commission basis.

**“(b) ESTABLISHMENT OF TRUST.—**A dealer or market agency that purchases livestock in a cash sale shall hold the trust corpus in trust for the benefit of the unpaid seller of the livestock until such time as the seller receives payment in full for the livestock. A payment in a cash

1 sale shall not be considered to be made if the instrument  
2 by which payment is made is dishonored.

3       “(c) LOSS OF BENEFIT OF TRUST.—An unpaid seller  
4 shall lose the benefit of the trust under subsection (b) un-  
5 less the seller gives to the dealer or market agency and  
6 to the Secretary written notice—

7           “(1) within 15 business days after the seller re-  
8 ceives notice that the payment instrument promptly  
9 presented for payment has been dishonored; or

10          “(2) within 30 days after the final date for  
11 making payment under section 409.

12       “(d) RIGHTS OF THIRD-PARTY PURCHASER.—The  
13 trust established under subsection (b) shall have no effect  
14 on the rights of a bona fide third-party purchaser who has  
15 purchased livestock from a dealer or market agency, with-  
16 out regard to whether the livestock are delivered to the  
17 bona fide purchaser.

18       “(e) EXEMPTION.—This section shall not apply with  
19 respect to a dealer or market agency whose average annual  
20 purchases of livestock do not exceed \$250,000.

21       “(f) JURISDICTION.—The district courts of the Unit-  
22 ed States shall have jurisdiction in a civil action—

23           “(1) by the beneficiary of a trust established  
24 under subsection (b) to enforce payment of the  
25 amount held in trust; and

1           “(2) by the Secretary to prevent and restrain  
2           dissipation of the trust corpus.”.

○



UNITED STATES SENATOR

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**LARRY**


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**PRESSLER**


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FOR IMMEDIATE RELEASE

July 11, 1996

PRESSLER TESTIFIES ON LIVESTOCK ISSUES--THE TIME FOR ACTION IS NOW

WASHINGTON, D.C. -- U.S. Senator Larry Pressler testified at the House Agriculture Subcommittee on Livestock, Dairy, and Poultry today regarding his bills, S. 1862 and S. 1758, and other efforts to protect livestock producers. The following is a copy of Senator Pressler's testimony:

"Thank you Mr. Chairman, Congressman Volkmer, members of the Committee for giving me the opportunity to testify this morning. I also would like thank you, Mr. Chairman, and your fine staff, for your dedicated work in addressing the many needs facing dairy and livestock producers today. I can say with no hesitation that South Dakota producers greatly appreciate your leadership. Your tireless efforts to establish a Livestock Dealer Trust, as well as your hard work on other important issues, will bring needed solutions to problems facing the cattle and dairy industries.

I have followed South Dakota's cattle industry all my life. As a young boy, I know how hard it is to earn a buck raising cattle. As a kid on my farm in Humboldt, I would buy 400 pound feeder calves, raise them for a year, and then sell them.

As you know, I have introduced S. 1758, which would establish a Livestock Dealer Trust and address other issues, such as mandatory price reporting. That bill was developed as the result of two Senate Commerce Committee hearings I have held over the last year to deal with packer concentration and other issues confronting cattle producers.

Establishing a livestock dealer trust simply is a case for fairness. I had sought the inclusion of a livestock dealer trust in the Farm Bill. I did so because it is necessary that the trust be established. I am hopeful we can obtain Congressional approval.

Mr. Chairman, I am ready to work with you to make this happen. I believe we have

(MORE)



an opportunity to enact a number of important initiatives to help our cattlemen. I would like to discuss briefly two of these initiatives.

First, the Congress should remove the existing ban on the interstate shipment of state-inspected meat and poultry products. I have introduced S. 1862 along with Senator Hatch to do just that.

Again, Mr. Chairman, you have been a recognized leader on this topic for fourteen years. Recently, the USDA Advisory Committee on Packer Concentration endorsed lifting the ban. I want to work with you, Mr. Chairman, to see that this ban is lifted. Doing so would help bring needed competition in marketing livestock products and place small processors on a level playing field with the giant packers and foreign countries.

The second subject is packer concentration. This has been a difficult and frustrating issue for the past year. I have been pressing the Clinton Administration to take action against meatpacker concentration. The problem is simple: Four firms have control over eighty percent of the market. With this kind of concentration, the temptation to collude and fix prices is high. I have advocated utilizing existing antitrust laws to make certain cattle are sold in an open and competitive market. The laws are there -- what's absent is enforcement. The Administration has taken marginal action to help the livestock industry. Stronger action is needed to ensure a thriving, competitive market.

Cattle producers are facing their worst economic times in recent memory. The President has the authority to order immediate Justice Department action. We must ensure our antitrust laws are enforced to the maximum extent possible.

We can pass a number of initiatives here in Congress. I have touched on a few. Yet, only by ensuring full enforcement of existing antitrust laws will we restore long-term economic health to the U.S. cattle industry. South Dakota ranchers know any real solution to beef prices must include antitrust action.

Mr. Chairman, support for these measures is growing and I hope that with the continued leadership of you and your Committee, this Congress can approve H.R. 3762 and S. 1862. Together, we can do the right thing for our nation's cattlemen. Again, Mr. Chairman, Congressman Volkmer, my thanks to you and the Committee for affording me the privilege to share my thoughts with you today.

###

Remarks of James R. Baker,  
Administrator  
U.S. Department of Agriculture  
Grain Inspection, Packers And Stockyards Administration  
Before U.S. House of Representatives Subcommittee on  
Livestock Dairy and Poultry  
July 11, 1996

I appreciate the opportunity to comment this morning on H.R. 3762, the "Dairy and Livestock Producer Protection Act of 1996." My remarks will focus on the Statutory Trust for Livestock Sellers in TITLE II of the bill which amends the Packers and Stockyards Act by adding a statutory trust to benefit livestock sellers who sell livestock to dealers or market agencies buying on commission (order buyers).

The Department supports dealer trust legislation.

A statutory "dealer trust" would require dealers and market agencies, who fail to pay for livestock, to hold all inventories, proceeds, and accounts receivable in trust for the benefit of the unpaid cash sellers. The failure of livestock dealers and market agencies to pay for livestock purchases accounts for a significant amount of unrecovered losses in the livestock marketing chain. While a dealer trust will not provide 100 percent recovery for the unpaid sellers, it will minimize the losses

Market agencies selling on commission (auction markets and commission firms) have long been required to handle funds received from the sale of consignors' livestock as trust funds. They are required to use a special bank account designated "Custodial Account for Shippers' Proceeds," into which all collected proceeds must be deposited and from which all proceeds are disbursed to consignors.

In 1976, Congress amended the P&S Act by establishing a packer trust requiring meat packers to hold all inventories and proceeds or receivables from the sale of meat in trust for unpaid cash sellers of livestock. Since this amendment became effective in 1976, livestock producers have received over \$47 million in recovered funds. The P&S Act was amended again in 1987 to establish a poultry trust benefitting poultry producers. Poultry producers have recovered over \$7 million since the establishment of the poultry trust. There is no similar protection for livestock sellers when they sell to a livestock dealer or market agency.

Dealer financial failures represent a significant amount of unrecovered losses in the livestock marketing chain. In the past three years, 59 dealers have failed financially while owing livestock producers over \$12.5 million. Livestock producers have recovered only \$2.2 million from bond proceeds and other sources, or approximately 18 percent during this 3-year period. A dealer trust would have

minimized losses suffered by producers because of the dealer's failure to pay and in many instances would have resulted in significant recoveries for the unpaid sellers.

Livestock producers are currently under financial pressure due to low livestock prices, drought in some regions, and high feed costs. Declining and lower prices significantly increase the risk of financial failure by livestock dealers. In times like these, the dealer trust is particularly important.

While the Department supports dealer trust legislation, we believe some minor technical changes need to be made in the proposed legislation for clarity. We suggest the following:

- Remove the word "the" on line 12 of page 20. This would clarify that all accounts receivable and proceeds derived from the sale of livestock by a dealer or market agency are subject to the trust and not just the receivables and proceeds from the **trust claimant's** livestock. Under the trust provisions currently contained in the P&S Act, all receivables or proceeds are held in trust as a pool for the benefit of all unpaid sellers. There is no requirement to trace or identify a specific sellers' receivables or proceeds. The pooling procedure simplifies

administering the trust and allows sellers to be paid on a prorated basis when insufficient trust assets are available to pay all livestock sellers in full.

- The definition for a market agency in the proposed dealer trust legislation is different from the definition in section 301(c) of the Packers and Stockyards Act. Since the term market agency is already defined in the Act, this definition is unnecessary and will lead to confusion in enforcing the Act.
- I would like to suggest an additional technical insert for clarification. The word “unpaid” needs to be inserted before the word “seller” on line 24 of page 20 and on line 3 of page 21 so that the trust beneficiary is clearly described.

Mr. Chairman, we would be happy to work with your staff on our suggested changes. Thank you for the opportunity to present the Department’s views on the dealer trust provisions of this proposed legislation. I would be happy to answer any questions you and your colleagues may have.

Statement of Mr. Lon S. Hatamiya  
Administrator  
Agricultural Marketing Service  
United States Department of Agriculture  
before the  
Committee on Agriculture  
Subcommittee on Livestock, Dairy and Poultry  
U.S. House of Representatives

July 11, 1996

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear before your Committee to discuss the "Dairy Industry Security Reserve Fund" provisions of the proposed "*Dairy and Livestock Producer Protection Act of 1996*" (H.R.3762). Accompanying me today is Mr. Richard M. McKee, Director of the Dairy Division of the Agricultural Marketing Service (AMS) and Mr. Ken Vail of the Office of General Counsel (OGC).

The Department generally supports an industry's efforts to help itself and has considerable experience overseeing industry self-help programs. However, we have a number of concerns about the provisions of Title I which should be addressed before we can support this proposal.

H.R. 3762 would establish a reserve fund to reimburse milk producers for losses incurred from the bankruptcy of a milk handler that received their raw milk. The reserve fund

would be funded through an assessment on milk handlers and administered by a nine-member Board of Trustees, who would be appointed by the Secretary. All administrative costs, including the Department's oversight costs, would be paid from the reserve fund, which is capped at \$30 million. The legislation would preempt any State or local payment security programs.

In reviewing the proposed legislation, the Department notes that the bill may overlook the essential role that milk producers' cooperative associations play in marketing their members' milk. In this regard, the bill's definitions of "milk handler" and "process" appear to be unclear. If the bill applies solely to persons who acquire milk from producers and that milk "goes into the bottle," then the bill could place an extreme administrative burden on milk producers' cooperative associations. Under this interpretation, fluid milk processors would be subject to the bill's provisions, but dairy product manufacturers would not, likely requiring cooperatives and possibly other handlers to set up an elaborate accounting system to determine on a daily basis the disposition of milk for each of its producer members if those producers were to benefit under this bill.

On the issue of oversight, the bill appears to give the Secretary the responsibility to oversee the Board but with limited oversight authority. For example, the bill does not provide the Secretary the power to approve or disapprove the Board's actions including budgets or contracts, to require information from the Board, or to review the Board's activities through an audit. We believe adequate oversight authority by the Secretary is central to an effective

program.

Also, we believe the bill may not provide milk producers with sufficient protection against the failure of milk handlers to pay producers for their milk. The Board would determine if a milk producer can receive a payment on the producer's claim of nonpayment by a milk handler due to the handler being in bankruptcy under title 11 of the United States Code. The total amount that could be paid to a milk producer on an approved claim would be 80 percent of the total amount not paid on account of the bankruptcy for milk shipments received during a 31 day period. It seems conceivable that more than 31 days could often elapse between the initial date of nonpayment and the date on which bankruptcy is officially declared. Moreover, the bill does not provide a means for a producer to appeal the Board's determination, other than filing a civil lawsuit against the Board.

A number of States, including Wisconsin, New York, Pennsylvania, Massachusetts and Vermont, currently have payment security programs. It is critical that the effects on producers in those States with existing payment security programs be considered prior to any action on this proposed legislation. Also, we believe that an in-depth examination of the various State programs and the differences that exist among those programs may be beneficial before considering Federal legislation.

The Agricultural Marketing Service (AMS) has only limited and incomplete information on financial failures of milk processors. The only information that we have



relating to the financial failure of milk processors is when we authorize our Market Administrators to write off monies owed to the various producer-settlement funds under milk orders. From 1980 to date, our recovery on those producer-settlement fund obligations averaged 8.1 percent of the amount owed for a total of \$500,000 of the \$6.2 million owed.

Over the most recent six-year period (1990-1996), information on bankruptcies is somewhat limited because they have not yet closed. We do know what the bankrupt processors owed producers at the time of the bankruptcy petitions. Those bankruptcies include: Finevest Foods (Pet Dairy/Land-O-Sun Dairy) (2/91), \$10 million; Hawthorn Melody, Inc. (2/92), \$13 million; Foremost Dairies Northwest (2/91), \$3.2 million; Cumberland Farms (5/92), \$5.8 million; Pine State Creamery Company (3/93), \$990 thousand; and SouthEastern Dairies, Inc. (4/94), \$973 thousand.

In closing, Mr. Chairman, I would note that the Department is certainly sympathetic to the vulnerability of dairy farmers when handler's face bankruptcy. This is an area that is deserving of our attention.

Again, we appreciate the opportunity to appear before your Committee today. We would be pleased to answer any questions you may have.

**NATIONAL CATTLEMEN'S BEEF ASSOCIATION**

My name is Tom Cook. I am Vice President for Government Affairs for the National Cattlemen's Beef Association (NCBA). I want to thank the subcommittee for the opportunity to present testimony today regarding the establishment of a livestock dealer trust as part of the Packers and Stockyard Act.

The National Cattlemen's Beef Association (NCBA) supports the provision in H.R. 3762, the Dairy and Livestock Producer Protection Act of 1996, which establishes a livestock dealer trust for the benefit of sellers of livestock to dealers and market agencies buying on commission. The NCBA and its predecessor organization, the National Cattlemen's Association, has had policy for several years seeking a livestock dealer trust. We have worked closely with House Agriculture Committee staff and coordinated with interested parties in the livestock industry to formulate a bill that meets our needs in establishing a livestock dealer trust.

H.R. 3762 would amend the Packers and Stockyards (P & S) Act to establish a statutory trust for the benefit of sellers of livestock to dealers and market agencies buying on commission.

The P & S Act currently provides for a statutory trust to cover livestock to meat packers in the event of a business failure or when they otherwise fail to make a payment. Since the packer trust became effective in 1976, livestock producers have received over \$47.9 million in recovered funds.

Since the 1987 amendment to the P & S Act to provide statutory trust protection to poultry producers, over \$7.1 million has been recovered for poultry producers under the provisions of the trust.

There is no similar trust protection for livestock sellers when they sell to a dealer or market agency buying on commission.

In the past three years 59 dealers and market agencies have failed financially owing livestock producers over \$12.4 million. Livestock producers are expected to recover about \$2.1 million from the bond proceeds and other sources, or approximately 18 percent.

The livestock dealer trust provisions in H.R. 3762 would require livestock inventories and accounts receivable due from the sale of livestock to livestock dealers and market agencies buying on a commission to be held in trust until all unpaid cash sellers have been paid in full. This provision also protects legitimate third party buyers from being impacted by a failed dealer or being subject to the trust.

The NCBA does not have a position on the Dairy Industry Security Reserve Fund provisions of H.R. 3762. We are hopeful that agreement can be reached by the interested parties on this provision so H.R. 3762 can move swiftly through the legislative process.

We thank the Chairmen of the House Agriculture Committee and the Livestock, Dairy and Poultry Subcommittee for their assistance in introducing this legislation and conducting these hearings.

**STATEMENT BY  
LIVESTOCK MARKETING ASSOCIATION  
ON THE "DAIRY AND LIVESTOCK PRODUCER  
PROTECTION ACT OF 1996"**

**BEFORE THE  
SUBCOMMITTEE ON LIVESTOCK, DAIRY, AND POULTRY  
U. S. HOUSE OF REPRESENTATIVES  
JULY 11, 1996**



MR. CHAIRMAN, thank you for the opportunity to appear before the Subcommittee to voice the livestock marketing sectors support for legislation establishing a livestock dealer trust. I am Nancy Robinson, Associate Manager for Government and Industry Affairs, for the Livestock Marketing Association. LMA is a national trade organization representing 1200 livestock markets, dealers and affiliated businesses throughout the United States and Canada.

LMA, as you are aware, supported the dealer trust amendment as adopted by the Senate in the 1996 Farm Bill. Therefore, we are strongly supportive of the "Dairy and Livestock Producer Protection Act of 1996" being considered here today.

As the members of the Subcommittee know, the face of the livestock industry has changed dramatically over the past quarter of a century. During that period, we witnessed the rise and enormous growth of the commercial feeding industry. As the feedlot sector grew, so did the number and importance of livestock dealers as marketing agents for feeder cattle into those feedlots.

Along with more dealers, unfortunately, we also had more dealer transactions going bad, with many sellers of livestock left unpaid for their labor. Over the years, a number of protections for the livestock seller who does business with a dealer were built into the current law. These protections include such things as requiring livestock dealers to be registered with the Packers and Stockyards Administration, paying promptly for their livestock purchases and retaining a bond to protect the seller's proceeds in the event a dealer fails to pay. With all these measures, however, the law still fails to provide sufficient

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protection for the livestock producer or other market agencies in the event a dealer becomes insolvent or fails to pay for livestock received.

We believe a dealer trust will give that additional measure of protection to the sellers of livestock that is needed in the industry today. As you've heard, the dealer trust would be very similar to the packers trust currently provided for in the Packers and Stockyards Act (the Act). Under a dealer trust, the livestock inventories or proceeds from the sale of livestock by a dealer would held in trust until full payment has been received by all unpaid sellers.

We should add a caution here however. The very way in which a dealer operates makes it unlikely that the trust can act quickly enough to capture and pay out the full amount lost by all sellers in every transaction. Since a dealer buys for his own account, he or she will necessarily turn over their inventory very quickly. Also, once a dealer begins to fail financially, it is likely there will be little bankable proceeds remaining from their livestock sales. Therefore, the dealer trust should not be seen as a foolproof remedy but only an additional tool in the protections afforded to livestock sellers under the Act.

Lastly, we are hopeful that an effort to take a more comprehensive look at other needed reforms of the Act will not end with this legislation. In fact, LMA has long advocated consideration of a payment protection fund similar to that being considered in the dairy trust provisions of this bill and used in several provinces in Canada as a more effective means to protect the proceeds of livestock sellers in this country.

Unquestionably, some fairly dramatic structural changes have occurred in the livestock industry over the past 25 years. However, during that same period only modest changes have been made in the Act in addressing those changes. For instance, the largest livestock marketing entities today, commercial feedlots, are not even covered under the Act. These factors, along with recent questions about packer concentration and the development of ever new livestock marketing tools, i.e. electronic marketing, brings the relevancy and currency of present law into serious question. Thus, we strongly urge the subcommittee, to return to this subject as soon as possible in the remaining days of this session or in the next Congress.

If time permits, Mr. Chairman, I now would like to enter into the record a very short statement on behalf of our sister marketing organization, the National Livestock Producers Association.

Mr. Chairman, that concludes my statement and I will be happy to try and answer any questions you or fellow subcommittee members may have.

**TESTIMONY OF THE  
AMERICAN FARM BUREAU FEDERATION  
TO THE  
LIVESTOCK, DAIRY AND POULTRY SUBCOMMITTEE  
OF THE HOUSE AGRICULTURE COMMITTEE**

**Presented by**

**William Knill, President of Maryland Farm Bureau, Inc.  
American Farm Bureau Federation**

**July 11, 1996**

Chairman Gunderson and members of the subcommittee, my name is William Knill. I am the president of Maryland Farm Bureau, Inc., a cattle producer, and a former dairy producer. I am pleased to provide you with the comments of the American Farm Bureau Federation (AFBF) on the Dairy and Livestock Producers Protection Act of 1996, AFBF represents over 4.6 million members nationwide, including the majority of the nation's dairy farmers and livestock producers.

AFBF has long sought ways to increase security for dairy producers. We have worked with you, Mr. Gunderson, and other members of the subcommittee over the past several years in attempting to find a way to address this issue through the Packers and Stockyards Act and other legislation. We are keenly aware of the problems faced by producers when their milk handler declares bankruptcy. Dairy producers in all regions of the country have seen the future of their farms placed in jeopardy when faced with the loss of anywhere from several days to over a month's worth of income from their milk sales.

Given the current price volatility of dairy products, and the probability that this volatility will continue as we move to eliminate the price support program, producers are at increased risk of such loss in the future. While the most devastating impact is on the producer, it must also be noted that a bankruptcy has a significant impact on local businesses where the affected producers normally purchase feed and other supplies. Action is needed to address this problem area before it becomes larger.

Several states have sought to protect their producers from such monetary losses. A variety of approaches have been tried, but many states still have no system in place. Existing state programs range from being quite successful, to some of rather limited value to producers.

Our national dairy policy states:

". . . . We support a national dairy plant security program to enhance a producer's ability to recover losses due to the financial failure of milk handlers or cooperatives. All those procuring milk from producers should be included in the program. We urge that all those procuring milk from producers pay more promptly. Producers should also have a priority lien on their milk. However, we oppose creation of a mandatory fund financed by a checkoff on dairy farmers to guarantee milk checks."

As you can see from our policy, and from past actions, AFBF strongly supports increased producer security; however, we must express concern over provisions in the proposed legislation that would preempt all state and local programs. In cases where programs are in place that provide adequate protection to producers, the option should be provided for those states to opt out of the national program.

Adequacy of the existing state programs should be determined by an independent review of the programs. In cases where adequate programs exist, producers should be allowed to vote on whether to maintain their existing program, or participate in the national program. Along with the opportunity to maintain existing programs, there would need to be a provision for producers in a state who vote to remain outside of the national program. This provision would not allow for recourse to recover future losses from this fund.

You will note that our policy also opposes "creation of a mandatory fund financed by a checkoff on dairy farmers to guarantee milk checks." We appreciate the fact that the proposed legislation specifies that the money collected for this fund is to have no effect on producer prices. We would ask that this be monitored closely to ensure that there is no adverse affect on producer milk prices.

Regarding Title II of the proposed legislation, "Statutory Trust for Livestock Sellers," AFBF strongly supports the language included. Our policy states:

" . . . . We support amendments to the Packers and Stockyards Act to extend prompt payment requirements to the wholesalers and retailers of livestock products. We support incorporation of a dealer trust provision to the Packers and Stockyards Act."

and also;

" . . . . The bonding requirement for livestock dealers and packers should be reviewed on a regular basis and reflect the volume of the maximum financial exposure to producers and/or their brokers and then be made available to the public."

We urge the committee to move forward with the provisions on the trust for livestock sellers as rapidly as possible. If need be, this should be done in separate legislation. Given the current severe economic problems faced by livestock producers, it is critical that producers be provided with assurances that they will be paid for the animals they sell.

Thank you for the opportunity to make these comments. Farm Bureau members appreciate your interest in providing greater certainty that producers will be paid for the food that they produce.

## National Milk Producers Federation

I am Jim Barr, Chief Executive Officer of the National Milk Producers Federation. The Federation represents major farmer owned dairy cooperatives throughout the continental United States. The 60,000 dairy producers who market milk through the Federation's thirty-three member cooperatives produce about 60 percent of America's high quality milk.

I appreciate the opportunity to comment on the need for legislation to assure that dairy producers are paid for the milk they market. The following statement puts the issue into perspective:

*"No individual is engaged in a riskier endeavor or one more vital to the national interest than the producer. And no entrepreneur is so completely at the mercy of the marketplace. The livestock producer, if he successfully combats the vicissitudes of weather, financing, skyrocketing costs, etc., must sell when his cattle are ready irrespective of the market. His livestock may represent his entire year's output. And, if he is not paid, he faces ruin. While some may argue that business is business and that farmers must take their chances along with everyone else, this Committee must view the situation from a larger perspective. We would be derelict in our responsibilities to the American people if we failed to address the evils which have inflicted heavy losses on the very producers upon whom the Nation depends for such an important part of its basic food supply."*

That statement appeared in House Report 94-1043 covering amendments to the Packers and Stockyards Act including provisions to create a statutory trust to assure payment to livestock producers. Congressional action is needed to extend similar payment assurance to dairy producers for their milk.

The National Milk Producers Federation supports legislation to enhance payment security for dairy producers. However, the Federation does not support using a security reserve fund that imposes an assessment on cooperatives for this purpose.

The Federation recommends that the Subcommittee adopt legislation modeled on the provisions of Section 5 of the Perishable Agricultural Commodities Act which extends

the trust concept to producers of fruits and vegetables and, in the process, exempts trust protection between a cooperative and its members.

There is sound reasoning behind such an exemption. The cooperative is an extension of the farm operation into the marketplace, selling bulk fluid milk to a bottling plant as well as manufacturing for sale nonfat dry milk, cheese or butter. The member is not selling milk to the cooperative, rather the members of the cooperative are selling milk, cheese or other products in markets across the country. To this end, cooperatives act as marketing agents on behalf of their farmer-owners. Thus the business relationship between farmer and cooperative is based on an internal business transaction which does not occur within the normal commercial activities of industry. Therefore, in the event of a cooperative's bankruptcy, the exemption logically would prevent farmer-owners of the cooperative from being paid by the cooperative ahead of other creditors. The Federation's support for a producer trust is contingent upon including provisions which exempt dairy cooperatives.

During the 1990's, Congress several times weighed the merits of establishing a dairy producer trust. In the 1990 farm bill debate, USDA submitted a report that cited several differences between the situation in the dairy industry and that facing livestock, poultry and fruit and vegetable producers including "Widespread bankruptcies by livestock packers."

Milk producers and their cooperatives also witnessed numerous bankruptcies—some of major proportions—by handlers. As consolidation of handlers proceeded at a rapid pace in recent years a number of leveraged buyouts weakened the financial condition of major processors. The financial risk exposure for farmers increased with larger milking operations. Unfortunately, some dairy producers and cooperatives experienced major losses due to handlers declaring bankruptcy.



Dairy trust opponents claim that imposing a trust requirement would cost approximately \$2 billion of industry assets, creating a financial burden. If so, can we conclude that dairy farmers and their cooperatives presently are extending \$2 billion in unsecured credit?

Lenders claim they would not extend credit to finance dairy plant operations unless farmers continue to provide a milk supply for the operation on unsecured credit. To oppose assuring payments to dairy producers in the event of a bankruptcy or to claim that nothing should be done to protect farmers from catastrophic losses that they would suffer if they didn't get paid for milk, is irresponsible.

Some states have addressed this issue in recent years. Today we have a patchwork of different state laws that provide differing degrees of protection to producers in different states. While helpful, the state-by-state approach does not resolve all the problems. What dairy producers need is a uniform federal law to provide equitable protection for all U.S. dairy producers.

Mr. Chairman, the statutory precedent for a producer trust was established by Congress with respect to livestock, poultry and fruits and vegetables. Dairy producers need similar protection. Federal legislation is needed to ensure that hard working dairy producers are paid for their labor. We would welcome the opportunity to work with you to develop legislation to enhance payment security for dairy producers. In our view, trust legislation with an exemption for cooperatives is the best alternative.

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STATEMENT OF MICHAEL YEAGER  
BEFORE THE  
SUBCOMMITTEE ON LIVESTOCK, DAIRY & POULTRY

July 11, 1996

My name is Michael Yeager. My wife, Ginger, and I ran a dairy farm in Northeastern Washington state. We live near a small town called Deer Park, which is thirty five miles north of Spokane.

I have no "credentials" to cite for you, I am only a citizen.

Over these past six years, hundreds upon hundreds of state and federal agricultural department workers and supervisors have asked me "Who are you with?" I am not "with" anybody. I am not with any group, organization, committee, or the like. I am with myself.

I am also the sole representative of the one hundred twenty Washington state dairy farmers who lost \$2,700,000 in the 1990 Foremost Bankruptcy.

Over six years and no one would stand for us, so today, I humbly try to do so.

I want to thank the Chairman for allowing myself and these other farmers to petition their government. I feel they have earned that right and their "wages" have been "injustice."

In June 1989, US Bank of Washington, a twenty three billion dollar Federal Reserve Regional Bank, made a careless loan. An ill advised loan, a poor loan.

US Bank lent Mr. Michael Cameron, a Florida investor, \$24 million, with which he purchased the milk processor to whom we shipped our milk. Unknown to the dairy farmers who shipped to that processor, Mr. Cameron had just dodged fraud charges by selling a company called Southern Bakeries in 1987.

Mr. Cameron had owned a number of companies, all financed by, "down payment loans", from his father-in-law. A wealthy man whom the bank had hoped to do business with.

US Bank lent the \$24 million to Mr. Cameron's corporation "KMC Group", which would have held the stock of the company, had it actually existed. There was no "corporation." Clearly, the Federal Bank should have known.

Mr Cameron's down payment worked out to about a two and a half percent "down", after loan arrangement fees of one and a half million dollars.

Mr. Cameron took the company over and he and his wife, "melted" credit cards.

Soon, and as one would expect, the loan was in trouble, just short of eleven months later. The farmers would pay with their livelihoods' for the Federal Bank's blunder.

A "sealed" Washington state court proceeding in June of 1990 allowed the bank to start a foreclosure. None of the farmers I represent, knew of the risk to their income. We were blind folded by the court there.

Mr. Cameron moved away and the bank took over, running the company with an accountant they had requested to be a receiver. The accountant knew nothing of dairy processing and the bank would have been better advised to consult with some of the panel members here, on how to run a dairy processor.

Under the accountant's and US bank's guidance the company was run into the ground.

Knowing that Federal Law forced the farmers to wait forty five days to be paid, the bank, now running the company, waited. I call this "the wait."

The wait started October 1st of 1990.

US Bank watched the farmers work for the next forty five days. They watched us labor and kept totals on our milk. On the forty fourth day of the wait, they seized our income. On the day before Thanksgiving 1990.

There were fifteen farmers in Montana, two left today. There were near

twenty in my county, I think only three of them remain. Their state refuses to submit figures. No one there will respond.

So, we are all left here then, pondering this new Federal legislation in an effort to prevent similar callous financial destruction. We are left with these dairy farmers who have no government and we'll fix it for the future but we have to leave them behind. That is fitting, I suppose.

So, I support the legislation despite the disgusting fact that these people are ruined and left without recourse. They stand there, ruined; abandoned by their government.

**STATEMENT  
OF THE  
NATIONAL CHEESE INSTITUTE**

My name is Jim Sartori and I am President and CEO of Sartori Foods, headquartered in Plymouth, Wisconsin. Sartori Foods, established in 1939, manufactures and markets 30 million pounds of Italian cheeses including Parmesan, Romano, Asiago, Fontina, Mozzarella and Provolone. We own and operate two plants in Wisconsin and employ 100 people.

It is my pleasure to appear today on behalf of the members of the National Cheese Institute (NCI), an organization representing manufacturers, processors, distributors and marketers of all types of cheese and cheese products.

Members of NCI manufacture, process and sell the majority of all types of cheese consumed in the United States. These include all natural, processed and a variety of specialty cheese products. The cheese industry in the United States is comprised of about 375 companies operating approximately 450 plants. Their cheese products have an estimated retail sales value of over \$20 billion.

**A Federal Program Mandating Payment Guarantees is Unnecessary**

Sound business decisions as well as existing state regulatory and other voluntary programs that do not discriminate against financially responsible companies provide sufficient payment protection for dairy farmers. Unlike the livestock industry, there have been few bankruptcies in the dairy industry leaving farmers unpaid. In fact, since 1992 there has been only one cheese processor bankruptcy, Welcome Dairy in Colby, Wisconsin, and in that situation there were no losses to producers.

**Trust Provisions are not workable**

Creating a statutory trust program as proposed for the livestock industry would jeopardize the long standing financial structure of the dairy industry. Because of longer payment terms in the dairy industry than exist for the cattle industry, significant assets would be involved in such a trust for dairy. This would eliminate the ability to use inventory and accounts receivable assets as a basis for obtaining the required working capital as is customary in the dairy industry. And, it would be especially difficult for smaller firms who traditionally rely on assets for partial

security for lending arrangements. Large companies often obtain financing on an unsecured basis, but this is not always an option for smaller companies.

Creating a trust that would designate certain assets as unavailable for collateral could force unsecured lenders to require collateral from companies who currently receive unsecured loans. Unsecured lenders would have to look to a smaller pool of unincumbered assets. The expected outcome of such a scheme would be to reduce the availability and increase the cost of financial resources for the dairy industry.

#### **Financial impact of a trust on the cheese industry**

Imposition of a trust would result in over \$600 million in cheese industry assets that could not be used to obtain secured financing. This represents nearly 16 percent of total cheese industry assets and over 30 percent of cheese industry net equity. It is also three times the \$200 million annual capital expenditures of the cheese industry as reported by the U.S. Department of Commerce.

#### **State payment security programs exist in many states**

Prior to hearings on the subject of dairy producer payment security in 1992, our organization along with other member groups of the IDFA, surveyed individual states to identify existing laws and regulatory programs to provide payment security to dairy farmers. IDFA identified nearly 30 states that had some sort of program (a summary of these state provisions identified in 1992 is attached). These programs include special bankruptcy pools with contributions from processors -- and sometimes producers (5 states), mandatory bonding laws (17 states), filing acceptable financial statements or putting cash in escrow (19 states), letters of credit (12 states), and other measures -- all intended to lessen the risk of losses to producers due to bankruptcies.

We believe it is worth elaborating on a few of these types of state provisions to provide the Subcommittee with appropriate background for consideration of a federal program that would substitute its provisions for these various measures.

Bankruptcy pools generally require milk processors (although some require both processors and

producers) to pay a certain amount of money per hundredweight into a fund which would be used to pay dairy farmers in the event of a processor bankruptcy. It is important that such funds be constructed to ensure a significant amount of risk remains with the dairy farmer to protect against abdication of good financial risk management so that companies of poor risk cannot run up large, unpaid milk bills and expect other handlers to cover the cost of default. Mandatory bonding laws can be extremely costly, penalizing all firms regardless of their financial status.

On the other hand, requirements for audited financial statements each year seem to be more fair. The way these work is if a firm's ratio of current assets to current liabilities falls below a specified minimum, the firm is required to post a bond. In my home State of Wisconsin, we have such a program and it has worked quite well. Since 1992, there have been only two defaults on payment to producers and in each instance the producers were paid in full. This type of asset to debt ratio formula means only companies with a higher degree of risk must pay. Because of this, it is probably the least burdensome producer payment security program in place at the state level, but also effective. I hasten to add, however, that even with this program many private companies are concerned about public disclosure of confidential financial information. It is also important that individual companies financial information is maintained in confidence.

#### **The NCI supports national uniformity in regulations**

Because many of our member companies conduct business in multiple states and buy milk from producers in more than one state, uniformity of regulations among states is something our organization generally supports. In fact, with all of the state payment security provisions that apply to dairy processors, for some companies it is an administrative and often a financial burden to meet the requirements of multiple state security programs. Therefore, if a federal program is to be implemented, it is essential that it include preemption of existing state programs.

#### **Components of a federal program**

While the members of the NCI believe no federal payment security program is warranted, if one is enacted, it is essential that the program achieve the following:

- Allows the existing financial structure and payment terms of the dairy industry to remain



unchanged.

- Applies to all milk handlers equally, whether proprietary or cooperative.
- Preempts existing state programs that ensure payment, substituting the federal program for these various state programs.
- Continues to place some burden of risk on producers as incentive to proper financial management practices.

The following provisions would meet all of these tests:

- Create a fund administered by the U.S. Department of Agriculture, consisting of monies collected through assessments on milk handlers. Assessments would be collected on all milk at the first point of processing.
- The rate of assessment should not exceed two cents per hundredweight; and the fund balance shall not exceed \$30 million. (Note: A one-cent assessment per hundredweight collected over a two-year period would build a fund of \$30 million.)
- Total amount paid to a milk producer based on an approved claim is limited to 80 percent of the amount due to the milk producer for up to 31 days.
- Preemption of state or local laws and regulations that impose payment security requirements including surety bonds, reserve funds, statutory trusts, letters of credit or any similar measures.

#### **Cheese important segment of dairy sales**

The cheese industry has been the largest contributor to growth in dairy product sales over the past several years. And there is every indication that this growth will continue and provide an increased market for milk.

To maintain a vibrant and growing cheese industry in the United States will depend on the industry's continuing ability to compete with other foods and other countries. Additional government mandates that are costly and burdensome to segments of the industry are counter to the basic needs of the industry.

While the National Cheese Institute believes a federal program is not warranted, if a program is to be implemented it is critical that it not change the financial structure of the dairy industry, should apply fairly to all handlers and preempt existing state program.

SUMMARY OF STATE MILK SECURITY LAWS AND REGULATIONS									
STATE	Filing of acceptable financial statement	Filing cash or equivalent (in escrow)	Maintaining a trusteeship	Posting security bond	Prompt Payment Terms Specified	Payment into producer security fund	Letter of credit	Other security arrangements	
Alaska									
Arizona	X								
Arkansas									
California				X	X	X			
Colorado				X	X		X		
Connecticut	X	X		X			X		
Florida				X					
Georgia		X		X	X		X	X	
Idaho									
Illinois									
Iowa									
Louisiana				X			X	X	
Maine					X				
Maryland									
Massachusetts	X	X		X		X	X		
Michigan	X	X	X	X					
Minnesota	X			X	X		X		
Mississippi									
Montana									
Nebraska									

STATE	Filing of acceptable financial statement	Filing cash or equivalent (in escrow)	Maintaining a trusteeship	Posting security bond	Prompt Payment Terms Specified	Payment into producer security fund	Letter of credit	Other security arrangements
Nevada				X	X			
New Hampshire	X			X			X	
New Jersey				X	X		X	
New Mexico								
New York	X	X		X	X	X	X	
North Carolina								X
North Dakota	X	X						
Ohio	X	X		X	X	X	X	X
Oregon								
South Carolina								
Tennessee				X				
Texas			X		X	X		
Vermont	X			X			X	
Virginia					X			
Washington								X
West Virginia								
Wisconsin	X	X	X	X	X		X	X
Wyoming								
TOTAL	11	8	3	17	12	5	12	6

**STATEMENT  
OF THE  
MILK INDUSTRY FOUNDATION**

My name is Bob Kosman. I am the Vice President-Operations, Dairy Group for the Kroger Company, a Cincinnati Ohio-based business which owns and operates nine dairies in Georgia, Indiana, Kentucky, Michigan, Minnesota, Ohio, Tennessee, Texas and Virginia. The Kroger Company is the largest grocery store chain in the United States with 200,000 employees, 1092 Kroger stores and annual sales of \$24 billion.

The Kroger Company is a member of the Milk Industry Foundation, the International Ice Cream Association and the National Cheese Institute, all constituent organizations of the International Dairy Foods Association (IDFA). I serve as a member of the Board of Directors of the Milk Industry Foundation (MIF) on whose behalf I am appearing today. The Milk Industry Foundation is the national trade association for processors and distributors of fluid milk and milk products including beverage milks, cream, yogurt, cottage cheese, sour cream and dairy based dips. MIF's member companies operate about 473 plants across the country and process nearly 80 percent of the fluid milk products and about 90 percent of the yogurt, sour cream and cottage cheese consumed in the United States.

The Kroger Company processes and sells a full line of fluid dairy products including all types of fluid milk, a variety of creams; as well as sour cream, dips, yogurt, cheeses, ice cream, ice cream novelties and a variety of other dairy products.

Each of the IDFA associations are strongly opposed to adopting for the dairy industry trust provisions similar to those applied to the livestock and poultry industries. Those laws provide a priority claim against a company's assets equal to the unpaid amounts owed farmers for the livestock or poultry in the event of a bankruptcy. In the case of a bankruptcy this priority claim would be paid from the company's assets even before secured as well as unsecured debt.

Such a priority claim would reduce the assets available to secure normal loans to a business such as mortgages on buildings, equipment, land, inventories and receivables. Financial institutions would generally deduct these unpaid amounts owed farmers from the amounts of money they

would otherwise be willing to loan; thus reducing the amount of financial support available to the industry.

Livestock and poultry processing companies pay farmers within a day or two of when they receive the livestock or poultry. Thus the payables to the farmers are relatively low. However, in the case of milk, the normal and customary payments are several days after the milk is received.

This has been the system for payment in the dairy industry since its inception in the United States. In fact, these customary and normal periods for payment have been very clearly and precisely incorporated in provisions of Federal Milk Marketing Orders. Under most federal orders dairy farmers are paid a partial payment by the end of each month for the milk received during the first 15 days of the month, and then another final and full payment for all milk received during the preceding month by the middle of the following month. This same practice is followed for most non-Federal order milk as well. It is not surprising there is longer time after receipt before payment is made in the case of delivered milk compared to livestock and poultry. First it is delivered daily, or at most every other day, and it is totally impractical to pay for every receipt. Cattle and poultry are delivered to the processor only once during their life time.

Additionally, dairy farmers are paid based on how the milk is used, depending on the amount used in Class I, II, III or IIIA. The actual utilization for the month is not known until the month is completed, therefore final payment cannot be made until later.

Applying to the dairy industry the same trust provisions that are applicable to livestock and poultry would reduce the assets available as collateral for financing operations and capital expenditures by about \$2.0 billion. This amounts to about 15 percent of total industry assets and one-third of industry net equity. To alter this structure would dramatically change the ability of many dairy companies to compete or even remain in business. It would most likely create a much larger problem than has occurred based on past history of dairy industry bankruptcies. Additional producer trusts should not be created for the dairy industry

**A Federal Program is Not Necessary**

There is no history of major bankruptcy problems in the dairy industry. We have attached a letter from the U.S. Department of Agriculture to Mr. Floyd Gaibler, dated November 4, 1992 and an update of that earlier letter addressed to Dr. Charles Shaw and dated July 3, 1996. These letters cover a 16 and one-half year period - 1980 to mid-year 1996.

The total number of bankruptcies listed in these letters are 77. That's an average of about 5 companies per year out of a total universe of about 2000 dairy companies in the United States, less than one-quarter percent per year, although the USDA letters don't specify the total amounts owed dairy farmers which were never collected. Nevertheless, if you add the total amounts stated in the letters it comes to a little less than \$50 million. The total value of all federal order producer milk during this sixteen year period amounts to about \$207.5 billion. Thus, the losses were .024 percent of the total value. This doesn't strike us as a problem deserving federal law.

**Less government intervention**

Although the IDFA associations don't favor a federal law, if some kind of producer security law is to be enacted it is critical that such a program:

- Not alter the existing financial structure and payment terms of the dairy industry
- Apply equally to all milk handlers regardless of whether they are a proprietary or cooperative company.
- Preempt existing state programs that guarantee payment by substituting the federal program for the state programs.
- Not eliminate the burden of risk on producers as impetus for sound financial management practices.

To this end we believe the "*Dairy and Livestock Producer Protection Act of 1996*" meets these tests.

It establishes a fund to be administered by the U.S. Department of Agriculture. The fund would consist of monies collected via assessments on all milk handlers irrespective of whether they are proprietary firms or cooperatives that are processing milk. These assessments would be collected on all milk at the first point of processing. Payments would be made to dairy farmers who actually delivered the milk to the bankrupt firm of first processing.

The rate of assessment should not exceed two cents per hundredweight with the balance not exceeding \$30 million. Upon reviewing the history of dairy company bankruptcies it appears the \$30 million maximum will be well above the amount needed, especially since the trustees would have the opportunity to borrow money if claims exceeded the cash available in the fund, so that claims could be paid promptly. The trustees could repay the loans by implementing an assessment.

The total amount paid to a milk producer is limited to 80 percent of the amount due for up to 31 days, based on an approved claim. This is important in order to require that producers have some incentive, albeit a small one, to deliver their milk to processors who they believe are financially capable of paying for the milk.

Preemption of state or local laws and regulations that impose payment security requirements including surety bonds, letters or credit or similar measures is a critical component.

In the end, prudent business practices and not federally mandated protections are the best solution to payment security.





United States  
Department of  
Agriculture

Agricultural  
Marketing  
Service

P.O. Box 96466  
Washington, DC  
20090-6466

**JUL 3 - 1993**

Dr. Charles Shaw  
International Dairy Foods Association  
1250 H Street, NW., Suite 900  
Washington, D.C. 20005

Dear Dr. Shaw:

This is in reply to your request to update a portion of a letter regarding current bankruptcies, sent to Mr. Floyd D. Gaibler, former Vice President of your organization, dated November 4, 1992, (Copy enclosed).

Two bankruptcies have been filed by milk handlers since the date of my letter to Mr. Gaibler regarding milk handlers regulated under the Federal milk order program. During March 1993, Pine State Creamery Company, Raleigh, North Carolina, petitioned for bankruptcy. Approximately \$990,000 is due pursuant to Federal milk order regulations and the Dairy Promotion Program. Amounts maybe due to other dairy producers or producer organizations for which we do not have any information. The plant has been closed, and general creditors will probably receive little or no distribution because of the outstanding debts owed to secured creditors. During April 1994, SouthEastern Dairies, Inc., Louisville, Kentucky, filed for bankruptcy. Amounts due pursuant to the Federal milk order regulations and to the National Fluid Milk Processor Program are approximately \$23,000. The plant has also been closed and general creditors may receive a small distribution. Amounts that maybe due other dairy producers or producer organizations are unknown to us.

We hope that this update of bankruptcies regarding the programs that we administer is helpful.

Sincerely,

*Richard M. McKee*

Richard M. McKee  
Director  
Dairy Division

Enclosure





United States  
Department of  
Agriculture

Agricultural  
Marketing  
Service

P.O. Box 98456  
Washington, DC  
20090-8456

NOV 4 1992

Mr. Floyd D. Gaibler  
Vice President  
International Dairy Foods Association  
888 Sixteenth Street, NW.  
Washington, D.C. 20006

Dear Mr. Gaibler:

This is in reply to your request for more information concerning financial failures among milk processors.

The only category in which we have complete records relating to the financial failure of milk processors is when we authorize our Market Administrators to write off monies owed to the various producer-settlement funds under milk orders. From 1980 to date there have been 85 such write-offs (82 proprietary handlers and 3 cooperatives) involving a total of 3.8 million dollars out of 4.14 million dollars owed. Our recovery on those producer-settlement fund obligations averaged 8.1 percent of the amount owed. Formal bankruptcy proceedings were involved in 62 of those 85 financial failures.

Our records indicate that the Department filed proofs of claim on behalf of producers in only 7 of these bankruptcies. These were on behalf of nonmember producers. Usually, cooperative associations file their own proofs of claim. Thus, we have very limited information on the losses incurred by producers in these bankruptcies.

\* With respect to the more recent bankruptcies (1990-1992), we have fairly good records on what was owed at the time of the bankruptcy petitions. However, these bankruptcies have not been closed. Thus, we have no firm information on the amount of the losses that are likely to be incurred by producers. However, we expect, for example, that in the Finevest Foods (Pat Dairy/Land-O-Sun Dairies) bankruptcy (2/91), producers will lose in excess of 10 million dollars. Other recent large bankruptcies yet to be resolved include Hawthorne-Melody, Inc. (2/92), (13 million dollars); Foremost Dairies Pacific Northwest (2/91), (3.2 million dollars); and Cumberland Farms (5/91), (5.8 million dollars).



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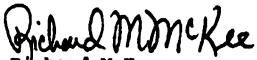
Mr. Floyd D. Gaibler

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In addition, our records indicate that there are 9 bankruptcies that were filed prior to 1990 that are yet to be resolved, with a total amount owed for milk marketed under the orders being in excess of 10 million dollars. The largest dairy bankruptcy, K. F. Dairies, Inc., and Affiliates (9/86) (formerly Knudson Corporation and Foremost Dairies) is also not resolved, but the bulk of the money owed is outside the Federal order program. Any failures with respect to manufacturing grade milk plants are also outside the Federal milk order program.

We are aware that in some bankruptcy cases producers have been able to recover part or all of their losses under State programs. The States where we know this has happened include Wisconsin, New York, Pennsylvania, Massachusetts and Vermont.

Sincerely,



Richard McKee  
Acting Director  
Dairy Division

**Statement of  
the Dairy Institute of California**

Mr. Chairman and members of the Subcommittee, my name is Rachel Kaldor. I am Director of Legislation for the Dairy Institute of California.

Dairy Institute is a state trade association, representing the processors of approximately 85% of the fluid, frozen, cultured milk products and cheese manufactured in California.

We appreciate the opportunity to appear before you today. The purpose of our testimony is straight forward. Should legislation creating a dairy producer payment security fund be approved by this Subcommittee, California processors request an exemption for our already established and fully funded state Producer Security Trust Fund.

The reasons for wanting an exemption are equally direct. California's producer security program is superior to any of the federal alternatives so far proposed. Specifically:

- California provides for recovery for nonpayment in the case of any applicable default, not only in the case of bankruptcy.
- A full 35 days of milk shipment are covered under our program.
- California requires handler bonding and licensing, as well as the filing of contracts by the producer to be eligible for coverage.
- Prompt payment laws remain in effect and are not waived in exchange for coverage under the fund.
- Contingencies (e.g. exceptions for short sales and coverage under new contracts), and critical details (e.g. status of brokers and agents) are fully outlined in the statute.

The California Producer Security Trust Fund program was created in 1987, after the bankruptcy of California's largest handler, the Knudsen Corporation. The Knudsen bankruptcy left California dairy farmers without payment for over \$30 million in milk shipments.

Over the past nine years, both handlers and producers have seen the benefits of a well designed and administered program. The California Producer Security Trust Fund program is tailor-made to protect our state's dairy farmers from handler default, and respond to changes in California's dairy industry.

- The Fund is maintained at a statutorily required level to cover 110% of the largest handler's monthly obligation (approximately \$21 million).
- Security charges will be reinstated based upon claims on the Fund which deplete it, or changes in the industry structure significantly increase the largest handler's monthly purchases.
- Excess interest earned by the Fund is used to reduce producer and handler obligations to industry-funded programs of the state Department of Food and Agriculture.
- A seven member board comprised of 3 producers, 2 handlers and 2 cooperative managers advises the Secretary of Food and Agriculture on the administration of the Fund. The Board has proven to be an objective and effective sounding board for proposed changes in the program.

California's Producer Security Act has strengthened business practices between handlers and producers operating within our state milk marketing order. To be protected under the fund, the following conditions have to be met:

- Contracts covering transactions must have been filed, by the producer, with the Department of Food and Agriculture prior to default (spot sales excepted).
- The handler must be licensed and bonded.
- The producer must not have prior notification of handler ineligibility under the fund (e.g. due to prior default).
- Milk must be produced and delivered to a plant in California.

California's Producer Security Act has ensured sound credit practices by producers and their cooperatives.

- The Producer Security Trust Fund is liable for no more than 35 days of milk shipments.
- Fund payments are subject to a \$200,000 deductible on each handler default.
- Sanctions on defaulting handlers encourage full compensation to affected producers without activation of the Fund.

Mr. Chairman, I would summarize our testimony by emphasizing that California's Producer Security Trust Fund is one of the best examples of a progressive, steadfast and cooperative effort by producers and handlers to establish a program which is fair and accountable to all parties who act responsibly in their business transactions.

The California Producer Security Trust Fund has proven its worth since its creation in 1987: the Fund stands ready to handle a major handler default, but has yet to be called upon to pay a claim.

A program that affords California dairy farmers superior protection and serves the needs of our state milk marketing order deserves to be preserved and provided an exemption under any proposal considered by this Subcommittee.



**National Livestock Producers Association**

**4851 Independence Street • Suite 200 • Wheat Ridge, Colorado 80033 • 303-423-4782 • Fax 303-423-6975**

July 10, 1998

**Livestock, Dairy and Poultry Subcommittee  
United States House of Representatives  
1301 LHOB  
Washington, D.C. 20515**

**Re: Dairy and Livestock Producer Protection Act of 1998**

**Mr. Chairman and distinguished members of the Livestock, Dairy and Poultry Subcommittee:**

On behalf of the member cooperatives of the National Livestock Producers Association -- which represent some 240,000 livestock producers nationwide -- I relay to you our strong support of the creation of a livestock dealer trust provision under the Packers and Stockyards Act.

The Packers and Stockyards Act, and the rules and regulations promulgated under it, afford livestock producers a great deal of financial protection in the form of prompt payment for their livestock and fair marketing practices. Sellers of livestock to a registered market agency or packer are fairly well assured that they will receive payment for that livestock as a result of various protective measures in place such as bonds, financial strength requirements and, in the case of a packer, the Packer Trust provision.

Livestock sellers to a registered dealer, on the other hand, have much less assurance of payment other than an inadequate bond and perhaps a few assets the dealer may have. The creation of a Livestock Dealer Trust would help remedy this situation as it would hold the dealer's livestock in trust for the benefit of the unpaid seller first.

The Packer Trust, which has been in existence for quite some time, has proven to be an effective vehicle for the payment of livestock and it only seems logical that the same protection should be in place in regard to dealers.

Again, we strongly support the creation of a Livestock Dealer Trust and urge you to favorably consider legislation which would accomplish this safeguard.

Sincerely,

*R. Scott Stuart*  
R. Scott Stuart, CEO  
on behalf of:



Central Livestock Association  
*South St. Paul, MN*  
 Empire Livestock Marketing, Inc.  
*Syracuse, NY*  
 Equity Cooperative Livestock Sales Association  
*Baraboo, WI*  
 Heartland Livestock Services  
*Regina, Sask.*  
 Indiana Livestock Exchange  
*Frankfort, IN*  
 Kentucky Livestock Exchange  
*Louisville, KY*  
 MFA Livestock Association  
*Marshall, MO*  
 Michigan Livestock Exchange  
*East Lansing, MI*  
 Mississippi Livestock Producers Association  
*Jackson, MS*  
 National Livestock Commission Association  
*Oklahoma City, OK*  
 Producers Livestock Association  
*Columbus, OH*  
 Producers Livestock Marketing Association  
*Omaha, NE*  
 Producers Livestock Marketing Association  
*N. Salt Lake, UT*  
 Tennessee Livestock Producers, Inc.  
*Columbia, TN*  
 Equity Livestock Credit Corporation  
*Baraboo, WI*  
 Michigan Livestock Credit Corporation  
*East Lansing, MI*  
 National Livestock Credit Corporation  
*Oklahoma City, OK*  
 Producers Livestock Credit Corporation  
*Omaha, NE*  
 Tri-State Livestock Credit Corporation  
*Sacramento, CA*

RSS/p

## Dairy Farmer's Lone Crusade for Justice After Failure of Plant Spurs Legislation

By Davn Rooms

Staff Reporter of THE WALL STREET JOURNAL  
DEER PARK, Wash. — An old twin box, left from baling hay, was Mike Yeager's first file cabinet—and the start of his political education.

That box held the beginnings of a lonely campaign of hand-written letters and calls from the 35-year-old high school dropout to that other Washington, thousands of miles away. His quest: to obtain justice for himself and scores of other dairy farmers who lost millions of dollars in the November 1990 collapse of Foremost Dairies Northwest Inc.

Loosing his cows in the aftermath of the Foremost collapse left a hole in Mr. Yeager's life. So, in the morning quiet after working the graveyard shift at a local aluminum plant, he would return to his trailer home on his 60-acre farm, pick up the phone and call Congress and the U.S. Department of Agriculture.

Michael Yeager

"The first thing they'd say is 'Well, who are you with?'" he recalls. "I'd say, 'Well, I'm with myself. . . . I never did put my finger on why those people can't conceive an American might call them. I'd say, 'I'm just an American. I'm a citizen.'"

### Jackhammer Intensity

At a time of widespread voter anger, Mr. Yeager's story is a modern Frank Capra tale of a citizen struggling to make himself heard by a distant political system. His jackhammer intensity has added new urgency to efforts in Congress to better protect dairy farmers, who operate in a system created by the federal government that requires them to deliver milk to processing plants 30 days or more before they are paid for it. For some, that means their very survival is at risk when an independent milk processor such as Foremost collapses.

Wisconsin Rep. Steve Gunderson, who has long championed action, introduced a compromise bill in March to create a reserve fund within the industry to help compensate farmers in such cases. But the measure faces opposition from large dairy cooperatives, which own their own processing plants and provide substantial campaign contributions to lawmakers.

Mr. Yeager's tale is made more compelling by a pattern of alleged fraud that contributed to his and other farmers' losses. Michael Cameron, the young entrepreneur who purchased the dairy from Carnation Co. in 1989, acknowledges that he is the subject of a federal tax and bank-fraud inquiry in Seattle. And separately, both U.S. Bancorp, which financed Mr. Cameron's original purchase of the dairy, and Price Waterhouse & Co., which reaped large fees in the transaction, face questions as to whether their actions put the farmers at risk.

Mr. Yeager's story begins back in 1989, when Mr. Cameron purchased Foremost dairies from Carnation Co. At the time, Price Waterhouse gave a bullish assessment of the dairy, which helped Mr. Cameron to get a loan from U.S. Bancorp worth \$10 million in total.

### Unmentioned Fraud Allegations

But unmentioned in the bank's credit analysis was the fact that Mr. Cameron had previously owned a company in Florida called Southern Bohemian Inc. that had been the subject of fraud allegations. According to his own sworn depositions filed in Idaho's Fifth Judicial District, Mr. Cameron took between \$5 million and \$6 million out of Southern to pursue other acquisitions, pay \$500,000 toward a luxurious house in Sun Valley, and otherwise finance his lifestyle. When a major creditor sued Mr. Cameron in late 1987 alleging fraud, Mr. Cameron sold Southern days later.

As Mr. Cameron's longtime accountant, Price Waterhouse had reason to know about his business history, but none-

theless worked on his behalf in the Foremost acquisition. Price Waterhouse officials have been called in the Seattle grand jury inquiry, but "we have not been informed that Price Waterhouse is a target of the investigation," says Alan Bentley, an attorney for the accounting house.

U.S. Bancorp refuses comment on what it knew of Southern's history at the time. "Michael Cameron was checked out by the bank, and everything was favorable," says Arland Hatfield, chief credit officer for U.S. Bancorp, who acknowledges Mr. Cameron never was required to provide details regarding his personal finances in regard to the Foremost loan.

In truth, Mr. Cameron's entire \$2 million share of the equity in Foremost was itself borrowed separately, and he offered no personal guarantee for the bank's share. Most striking, his Idaho-based company, which was to buy Foremost's stock and therefore was pivotal in the transaction, wasn't even incorporated in the state until a year after the acquisition.

As Foremost's owner, Mr. Cameron  
Please Turn to Page A3, Column 1



WALL STREET JOURNAL  
9/94

## Dairy Farmer's Crusade for Justice Sparks Legislation in Washington

*Continued From Page A2*

began writing corporate checks for expenses unrelated to the dairy's operations. "You are unable to restrain your own need to use loan funds for improper purposes," wrote James Kroening, a bank officer, in a letter to Mr. Cameron on June 18, 1990. Mr. Kroening's letter lists \$822,000 in "improper payments" through March that year. After bringing in auditors, the bank raised its estimate to at least \$1.1 million. However, U.S. Bancorp, which is now pressing for Mr. Cameron's prosecution, didn't give written notice to the U.S. attorney of its concerns until early 1991, despite federal banking rules requiring suspected criminal violations to be reported within 30 days.

Mr. Cameron, who now lives in an affluent Orlando, Fla., suburb as a consultant helping businesses find capital, denies any wrongdoing but declines to discuss his business dealings, citing the grand jury investigation. "I'm not a vestal virgin," concedes the self-styled entrepreneur. But in this case, he says, "I'm the scapegoat."

As the situation deteriorated, U.S. Bancorp began to exert significant control over Foremost, and periodically waived credit restrictions in hopes the dairy could be sold or find refinancing. But what it didn't do was provide farmers like Mr. Yeager with any warning that their livelihood was at risk. Indeed, in order to avoid alarming the farmers or the dairy's customers, U.S. Bancorp in the early summer of 1990 helped Foremost change its name and then went into court to lay the legal groundwork for a possible future foreclosure against the newly renamed company.

### Information Under Seal

These actions were done under seal in Washington state courts, and none of this information was then readily available to Mike Yeager and other dairy farmers—who had the most to lose in a foreclosure. A system of dairy "marketing orders" established by the federal government guarantees producers like Mr. Yeager a minimum price for their milk, but also dictates credit terms that force them to wait 30 or more days for payments from processors. Within the industry, this equals a float of as much as \$2 billion annually; in the Foremost case, the 120 Washington state producers who lost an estimated \$2.7 million in the bankruptcy unwittingly had far more invested in the company than did Mr. Cameron himself.

Finally, with October milk checks in the mail and fearing further losses, the bank went into court and petitioned successfully for a court-appointed bankruptcy receiver as it has done before. The receiver asked that the mailed checks be honored, but the bank-backed receiver stayed payment. "There was not enough money to pay the bank and the farmers," U.S. Bancorp's Mr. Hatfield says bluntly. "The bank was the secured party and the bank got paid."

The timing of the cutoff — on the Veterans Day holiday weekend in 1990 — compounded the confusion for farmers and pitted one against the other. In the small town of Ephrata, Joe DeHoog watched a neighbor get paid while his own check for \$29,904 came back marked "NSF" for nonsufficient funds. It's now framed on his wall. "I look at it every day," says Mr. DeHoog.

North of Spokane, Sheldon Graham let go 110 acres of land on which he had made payments for nearly a decade. Emerson Grafmiller sold a fifth of his herd after being refused further credit by the local U.S. Bancorp branch. And when the trucks came to claim Louis Barcellos's cows, the burly Portuguese-American refused to come out to watch. "I raised them from babies all the way up," said Mr. Barcellos. "All of a sudden someone kicks your livelihood out."

### Failed Court Challenge

A court challenge, mounted by the farmers, failed in 1992, and in disbelief, Mr. Yeager sought to understand what had happened to him — and what could be done to keep it from happening to others.

He went to the local library and later to Gonzaga University, where a law student helped him do research. He read books about the Constitution, and studied Moody's and Standard & Poor's, trying to trace the people in the corporations that had so affected his life. A biography of Thomas Jefferson gave him comfort; he sent away to the Washington state public-disclosure commission for blue-and-white campaign spending reports, and would order microfiche files on specific political-action committees. A now-thumbworn transcript of a House Agriculture Committee hearing opened Mr. Yeager's eyes to his "cast of characters" in the polished Capitol a nation away.

Several phone conversations with an aide to Rep. Charles Stenholm, a top Democrat on the Agriculture panel and former Texas cotton farmer, so impressed the staffer that he arranged a brief telephone conversation between the farmer and the lawmaker. "He's a bulldog," Mr. Stenholm says of Mr. Yeager, adding, "What the bank did was pitiful."

Mr. Yeager's own congressman is House Speaker Thomas Foley, but despite Mr. Yeager's direct appeal to the speaker at a town meeting, Mr. Foley never protested U.S. Bancorp's actions. The bank is a formidable presence in the Northwest, and its political committee and officers have given at least \$17,000 to Mr. Foley's campaigns since the fall of 1990, including

Mr. Foley says critics may fault him for treating the case "too legalistically" but are "absolutely unfair" to suggest he is influenced by allegiance to the bank. "Those things are terribly unfortunate, but I don't have the ability to intervene,"

Mr. Foley says of the bankruptcy proceeding.

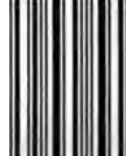
Dairy state lawmakers such as Rep. Gunderson have long argued that Congress should do more to protect farmers in such cases. Mr. Yeager's efforts have helped increase the pressure for action, but the outcome is still unclear.

For his part, Mr. Yeager now raises young heifers for sale to other dairy farmers. But he swears never to go back into milk. "I still don't know where their buildings are or where their offices are. I just know where I called led me certain places," he says of his quixotic campaign. "I'm not obsessed. I'm committed. I'll rest when the story's told and the law's written."

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